

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products)
Liability Litigation,) MD 15-02641-PHX-DGC
)
_____))
)
Lisa Hyde and Mark Hyde, a married) Phoenix, Arizona
couple,) September 18, 2018
)
Plaintiffs,)
)
v.) CV 16-00893-PHX-DGC
)
C.R. Bard, Inc., a New Jersey)
corporation, and Bard Peripheral)
Vascular, an Arizona corporation,)
)
Defendants.)
_____)

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DAY 1 - A.M. SESSION

Official Court Reporter:
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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared with Computer-Aided Transcription

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A P P E A R A N C E S (CONTINUED)

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P R O C E E D I N G S

(The following proceedings took place in open court,
outside the presence of the jury panel.)

THE COURTROOM DEPUTY: MDL 2015-23641, Bard IVC
filters product liability litigation, on for the jury trial
regarding Plaintiff Hyde.

Will the parties please announce.

MR. O'CONNOR: Yes. Good morning. Mark O'Connor for
the Plaintiffs Hyde.

MR. LOPEZ: Good morning, Your Honor. Ramon Lopez
for the Plaintiffs Hyde.

MS. REED ZAIC: Good morning, Your Honor.
Julia Reed Zaic for the Plaintiffs Hyde.

MR. ROGERS: Good morning, Your Honor. Jim Rogers on
behalf of defendants.

MS. HELM: Kate Helm on behalf of defendants.

MR. CONDO: Morning, Your Honor. Jim Condo on behalf
of the defendants.

MR. DADIKA: Good morning, Your Honor. Greg Dadika,
associate general counsel for litigation for C.R. Bard.

THE COURT: All right.

Good morning, everybody.

EVERYBODY: Good morning.

THE COURT: Let's cover a few jury selection matters.

1 In the last few days we have received requests to be
2 excused from four jurors and I've excused three of them.

3 Juror 105 contacted us a few -- contacted the jury
4 office a few days ago and indicated that there had been a
5 death of an immediate family member and so I excused
6 Juror 105.

7 Juror 103 contacted the jury office with a doctor
8 note that she was suffering from a serious medical condition
9 that would prevent her from participating in the trial. So I
10 went ahead and excused Juror 103.

11 And Juror 64 also contacted the jury office with a
12 doctor's note indicating she had been ill the last several
13 days and would be unable to participate in the trial, so I
14 excused Juror 64 for that reason.

15 So Jurors 105, 103, and 64 will not be appearing
16 today.

17 We also received this morning a note from -- well,
18 from a doctor for Juror Number 68 and I think we should ask
19 some follow-up questions probably after we've excused the rest
20 of the jury panel.

21 Did you get a copy of the note regarding Juror 68?

22 MR. ROGERS: Yes, Your Honor.

23 THE COURT: So we ought to ask some follow-up
24 questions.

25 Did you see the other documents from the other

1 jurors?

2 MR. ROGERS: Yes, Your Honor.

3 THE COURT: Okay. Any questions about that?

4 All right. So we'll keep Juror 68 in the process and
5 follow up on the questions about that juror when we are going
6 through the jury selection.

7 MR. O'CONNOR: Your Honor, while we're on jurors, can
8 I raise another issue?

9 THE COURT: Yes.

10 MR. O'CONNOR: Going through the people who are going
11 to be coming today, I found -- there might be more, but I
12 found at least two who I think we should probably ask
13 questions of in private.

14 And that was Juror 16. She actually answered
15 "privacy" on a couple of responses.

16 I think the other one I believe we should consider
17 for a sidebar would be Juror Number 6. If you remember he has
18 a bladder stimulator issue. Rather than talking about that
19 up-front, we had raised that last time.

20 And then there is a Juror Number 44 who, again, set
21 forth "privacy" in a couple of answers on medical conditions.
22 And so I just wanted to bring that to the Court's attention.
23 I think it would be -- I would request that we not ask the
24 questions in front of the panel but we bring them up.

25 THE COURT: Mr. Rogers, any disagreement with that?

1 MR. ROGERS: No, Your Honor. I think that is okay.

2 And I also have got one that we may also add to the
3 list if we're going to be questioning jurors outside of the
4 presence of the entire panel. And that is Juror Number 59.
5 And, Your Honor, this gentleman indicated that he may have
6 difficulty applying the law as instructed due to an experience
7 where his sister experienced a wrongful death that they
8 attributed to her doctors. And so I think we might need to
9 follow up with him and maybe we can do that outside of the
10 presence of the rest of the panel.

11 THE COURT: Okay. All right.

12 And I will keep that list of Juror 6, 16, 68 is the
13 one we got a note on today, 44, and 59 for jurors that I'll
14 ask to remain behind when we excuse the rest of the jury
15 panel. And I will ask the question of the panel that I have
16 before, that if anybody would prefer to address an issue
17 privately, they can just tell us that and we'll add them to
18 the list of who we'll talk to after we excuse the main jury
19 panel.

20 Plaintiffs' counsel, do you have comments or
21 corrections on the voir dire questions?

22 MR. O'CONNOR: None from us, Your Honor.

23 THE COURT: How about from defense?

24 MR. ROGERS: No, Your Honor.

25 THE COURT: How about on the preliminary jury

1 instructions?

2 MR. O'CONNOR: I don't think we had any issues.

3 MR. ROGERS: None, Your Honor.

4 THE COURT: All right. Then I'll plan to ask those
5 voir dire questions and give the preliminary jury
6 instructions.

7 Plaintiffs' counsel, do you have other matters that
8 we ought to address before we get started this morning?

9 MR. LOPEZ: Yes, Your Honor. They deal with the
10 opening statement and one of the rulings issued I think
11 yesterday on deposition. I don't know if that's something you
12 want to do after we pick a jury or whether you want to do it
13 now.

14 THE COURT: Let's do it now.

15 MR. LOPEZ: I think there are two issues. Actually
16 what I'm doing, I'm dealing with the objections that defense
17 counsel had to two of our slides. One of them has to do with
18 the document that you've now excluded, at least from
19 Janet Hudnall's testimony, users can be swayed by aggressive
20 marketing in spite of negative clinical experience, and I
21 think the basis of that was the defendants objecting to that
22 had something to do with failure to warn. And I think I speak
23 for all of us, on our side we're confused about why that's a
24 warning issue, Your Honor, because it actually is a marketing
25 issue. And you'll recall that the defendants filed a motion,

1 a motion in limine regarding marketing materials, and then
2 they withdrew it. So that issue's still ripe in this case.

3 The other thing is that under the punitive damages
4 cases in Wisconsin, the jury may consider defendants' attitude
5 and conduct and the degree of defendants' awareness of the
6 hazards and the successiveness. And this document is a staple
7 for the awareness this company has for negative clinical
8 experiences, yet they know they can still be successful
9 marketing the product with aggressive marketing. I mean,
10 that's -- there's going to be evidence of that. We have
11 actually someone who hasn't testified yet, Mr. Hug, who is now
12 their national sales something. There's going to be a lot of
13 evidence about the way they market this device.

14 So I just -- I -- maybe for clarification for us, I
15 don't know why that's a warning issue. And even if it was, we
16 wanted to take the warnings, all the things that dealt with
17 warnings and IFU out of the case. It's the defendants'
18 position they want to be able to tout their warnings as part
19 of the fact that this thing's not negligently designed.

20 And what happens with warnings, there's a lot of case
21 law about this, and it also deals with learned intermediary
22 doctrine, but aggressive marketing can water down a warning.
23 So, in other words, if you have an IFU, they're going to say
24 doctors knew and there's an IFU, and you're marketing this
25 thing and you're not fairly balancing it, you -- you are

1 keeping away from, as part of your design and marketing of the
2 device, the fact that there's a negative clinical experience
3 and you're weighing heavily on marketing, and that just waters
4 down this IFU defense they have.

5 We just got hit with this yesterday with your order
6 and we're concerned that's not giving us a fair opportunity to
7 counter that part of their defense, the fact that they
8 think -- they're going to say their IFU and they've properly
9 advised doctors and they've withdrawn their marketing
10 materials on motion in limine. It's one of the slides we
11 have. I don't know whether you're kicking that document out
12 or just Mrs. Hudnall's testimony about it.

13 THE COURT: Did you say there was a second issue?

14 MR. LOPEZ: The other issue is that the defense --
15 there's a slide that deals with the Recovery migration to the
16 heart issue. The slide I think that follows is an HHE, and
17 we've adopted the language in the HHE which calls what was
18 happening at that time catastrophic injuries. They don't want
19 us to use that. They want us to use a different word. But in
20 the HHE, which includes both fractures with migrations to the
21 heart. Like what happened to Mrs. Hyde, and it also includes
22 the migration or embolization of the entire device into the
23 heart, Dr. Ciavarella uses the term "catastrophic." And
24 there's an issue about whether or not we can use "catastrophic
25 injuries reported" as it relates to the Recovery filter.

1 THE COURT: Do you have copies of these slides?

2 MR. LOPEZ: I do, Your Honor.

3 May I?

4 THE COURT: All right. Who from the defense side
5 would like to address these issues?

6 MR. LOPEZ: Then there's some issues with their
7 slides. We'll come back after that.

8 THE COURT: Okay.

9 MR. ROGERS: Your Honor, we -- as Mr. Lopez informed
10 the Court, we did have objections to three of their slides.
11 And the first thing that he brought up, your docket entry
12 12598, was the docket entry that dealt with Ms. Hudnall's
13 testimony, and the testimony about this document was excluded
14 under Rule 402. And the objection was that it related to
15 failure to warn, and that objection was sustained.

16 And so, Your Honor, when we saw that this was in
17 their opening slide deck, it appeared to us that the Court was
18 inclined to exclude that evidence, and hence we objected.

19 And do you want me to continue, Your Honor, or do you
20 want to follow up?

21 THE COURT: Did you want to address the other slide?

22 MR. ROGERS: Yes, sir, I'll be glad to.

23 Your Honor, you've got these two slides. The first
24 one, as you can see, up at the top it's got the header
25 "catastrophic injuries reported," and there are two

1 descriptions of two different incidents, both of which are
2 described as catastrophic. And then the information below
3 them indicates that the entire filter migrated to the right
4 atrium or to the right ventricle.

5 And, Your Honor, even though this particular slide
6 does not mention the word death, we thought that it could
7 easily be discerned from the descriptor that the filter went
8 to the heart and that it was a catastrophic injury that it was
9 a death so we objected to that slide. I was under the
10 impression with the third slide we had worked that out, but I
11 don't know if that's accurate.

12 MS. REED ZAIC: It is. We've withdrawn it.

13 MR. ROGERS: It is.

14 Okay. Thank you, Your Honor.

15 THE COURT: Okay.

16 By my count I've reviewed 34 depositions in the last
17 week and a half. All of them on weekends or evenings. So I
18 can't say with confidence that I remember my precise thinking
19 on the Hudnall issue. But let me explain to you the line I've
20 tried to draw. And I don't know if we can resolve this this
21 morning or not or if we'll need more argument on it.

22 There is no failure-to-warn claim in the case so the
23 jury cannot find defendant liable for a failure to warn.

24 The jury cannot award punitive damages for a failure
25 to warn because the failure-to-warn claim is gone.

1 When defendants argued that they should be able to
2 put into evidence the IFU and the SIR guidelines, my initial
3 reaction was that is a warning and shouldn't be in the case.
4 But then as I read the Wisconsin statute and I read the
5 Restatement, although I know there's still a question of how
6 many of the comments of the Restatement are actually a part of
7 Wisconsin law that we have to work through on jury
8 instructions, I concluded that since the jury must decide
9 whether or not the product was not reasonably safe, that is
10 language right from the statute, it was relevant for the jury
11 to know what users of the product had been told about risks of
12 the product.

13 If I get a product and I'm not informed of a risk
14 that it has, it may be unreasonably dangerous to me because I
15 don't know of that risk and I'm going to fall prey to it.

16 But if I get a product with instructions or warnings
17 that say here's a risk of this product so that I can assess
18 it, deal with it, avoid it if I can, then it might not be
19 unreasonably dangerous.

20 I think that's the thinking behind the comment to
21 Restatement section 2. And I concluded that since there are
22 risks with medical products, it was relevant for the jury to
23 understand what doctors had been told about those risks, and
24 patients, too, in deciding whether or not the product was not
25 reasonably safe. That's why I let in the IFU and the SIR

1 guidelines -- well, that's why I let in the IFU. I let in the
2 SIR guidelines because those guidelines talk about acceptable
3 levels of risk for filters. Now, that's not law, but it's
4 something that comes from the medical community that uses it,
5 and I thought that's important perspective for a jury to have
6 in deciding whether this product was not reasonably safe:
7 What does the medical community view as a reasonable level of
8 risk with this product?

9 So my view was the IFU and the SIR guidelines both
10 went to the question of whether the product was not reasonably
11 safe. Not that it went to failure to warn. But that's why it
12 was relevant.

13 I then concluded, well, if the defendants are going
14 to be able to tell the jury, here's everything we told the
15 jury about risks, then plaintiffs should be able to say,
16 here's everything they didn't tell the jury about risks. And
17 that's why I let in a lot of testimony in my deposition
18 rulings where the question was, "Were doctors informed of this
19 risk" or "Did you ever communicate this test result to
20 doctors." And there's a lot of that evidence that I've
21 admitted for exactly that reason. Because defendants are
22 going to stand up and say this wasn't an unreasonably
23 dangerous product because the medical community understood
24 these risks, plaintiffs should be able to say this was
25 unreasonably dangerous because the medical community did not

1 know about these risks.

2 That's all going to whether it's unreasonably
3 dangerous. That's what I was trying to do when I went through
4 the depositions.

5 When I saw a question and an answer that seemed to me
6 to go to duty, namely a question of a witness, "Would you
7 agree that a medical manufacturing company has an obligation
8 to warn patients of everything it knows about risks," that, to
9 me, doesn't go to whether the product is unreasonably
10 dangerous, that goes to a duty to warn, and there is no breach
11 of a duty to warn claim in this case. So I tried to exclude
12 questions that I thought went to duty. Although I found it
13 was difficult sometimes to draw the line between a question
14 that talks about an undisclosed risk and a question that talks
15 about a duty. But I did my best to do that.

16 When I came to the Hudnall questions where she was
17 talking about a marketing technique, that seemed to me to go
18 to the duty to warn or the failure-to-warn issue. Because it
19 seemed to me what she was testifying about was how do we
20 market the product? What's the pitch we make to doctors?
21 That seemed to me to go to whether or not the warnings that
22 were given as part of that pitch were adequate. It wasn't
23 talking about test results or risks that weren't communicated,
24 it was what's our marketing technique. And therefore that
25 seemed to me to fall on the duty to warn side of the line

1 rather than on the unreasonably dangerous side of the line.

2 Now, that's my best memory of why I concluded when I
3 came to those questions that they should be not admissible.

4 I'm not sure that I've drawn the line correctly. I
5 did my best going through 34 deposition transcripts to do
6 that.

7 But it may be as we go through the trial and I hear
8 the evidence I'll conclude, no, I was too far to one side or
9 the other on the line. But that was the rationale I was
10 using.

11 Because we're seven minutes to 9:00, what I think I'd
12 like to do on this issue is keep it under advisement. Allow
13 the plaintiffs certainly to argue later to me that Hudnall's
14 memo and her testimony should come in because it goes to how
15 the product is not reasonably safe. And I'll be happy to
16 think about it. But that was my rationale at the time that I
17 made the decision.

18 So I think on the Hudnall evidence what we should do
19 is not include it in the opening, but I'll be happy to hear
20 further argument on why that really does go to the product
21 defect issue that the jury's going to have to decide.

22 By the way, one other thing to keep in mind. I
23 understand the arguments that this testimony and similar
24 testimony goes to punitive damages.

25 My concern about that was there's lots of stuff about

1 a failure to warn that could go to punitive damages, and this
2 is not a failure-to-warn case. So I tried again on punitive
3 damages evidence to tie it to what is the issue in the case,
4 product defect. And in drawing a line between what was or was
5 not told to doctors, it seemed to me to be the same line.
6 Namely, when they were told of risks that's relevant to
7 unreasonable dangerousness. When they were not told of risks,
8 that goes to it as well. And to punitive damages.

9 And, finally, I was concerned about the law which
10 suggests that the conduct that gives rise to punitive damages
11 should be related to the conduct that gives rise to liability.
12 And so if we've got a wrongful or arguably wrongful marketing
13 technique six years before this defective product was sold,
14 I'm not sure it satisfies that law.

15 I say that so you can address my thinking as we argue
16 this further, but I don't think we have time to work through
17 all of that this morning, so --

18 MR. LOPEZ: We do have a number --

19 THE COURT: Let's leave Hudnall out.

20 On the catastrophic injury issue, I didn't understand
21 your point, Mr. Lopez, about the word catastrophic.

22 MR. LOPEZ: We want to use it --

23 THE COURT: I know.

24 MR. LOPEZ: It's in the IFU and it talks about -- I'm
25 sorry, the HHE.

1 THE COURT: I heard you say that. I didn't know what
2 you mean by it's in the HHE.

3 MR. LOPEZ: It's described in the HHE as a
4 catastrophic injury. Plus -- and it does have the migratory
5 deaths. But keep in mind there were also deaths from a piece
6 of the metal going into the heart. That's a catastrophic
7 injury.

8 THE COURT: Mr. Rogers, do you agree that the HHE
9 uses the phrase "catastrophic injury"?

10 MR. ROGERS: Yes, Your Honor, I believe it does.

11 THE COURT: All right. I'm going to allow you to use
12 that slide.

13 Okay. Let's go through -- how many -- looks like you
14 have about 15 --

15 MR. LOPEZ: I don't know how many he's agreed to.

16 THE COURT: Well, figure that out before you talk to
17 me.

18 (Counsel conferring.)

19 THE COURT: How many are there, Mr. Lopez?

20 MR. LOPEZ: I don't know. Probably a dozen.

21 MR. ROGERS: Your Honor, I've got objections to over
22 25 slides, so I don't know how many we're talking about this
23 morning.

24 THE COURT: Well, we've got four minutes. We don't
25 have time to go through a dozen slides.

1 MR. LOPEZ: Could we do it before he gives his
2 opening?

3 THE COURT: Well, yeah. What I want to do is -- you
4 really ought to be able to work out these issues. We've had
5 two trials. You know my rulings, you know the evidence. I'm
6 going to charge you with having another conference about this.
7 You ought to be able to work it to a lower number. But we'll
8 take up the ones where you really can't reach agreement after
9 we've picked the jury and before opening.

10 MR. LOPEZ: All right. That's fine, Your Honor.
11 Thank you.

12 THE COURT: Okay.

13 Defense counsel, do you have matters to discuss
14 before we start with the jury this morning?

15 MR. ROGERS: No, Your Honor.

16 THE COURT: Okay.

17 We will go ahead and have the jurors come up. We'll
18 get them seated.

19 Folks in the back, you're going to need to move so we
20 can seat jurors in those three rows behind, and we'll charge
21 into jury selection. Thank you.

22 (Recess was taken from 8:30 to 9:19. Proceedings resumed
23 in open court with the jury panel present.)

24 THE COURTROOM DEPUTY: MDL case 2015-2641, Bard IVC
25 Filters Product Liability Litigation, jury trial for Lisa and

1 Mark Hyde.

2 Will the parties please announce.

3 MR. O'CONNOR: Good morning. Mark O'Connor for the
4 Plaintiffs, Lisa and Mark Hyde.

5 MR. LOPEZ: Good morning. Ramon Lopez also for the
6 Plaintiffs, Lisa and Mark Hyde.

7 MS. REED ZAIC: Good morning. Julia Reed Zaic for
8 the Plaintiffs Lisa and Mark Hyde.

9 MR. ROGERS: Good morning. I'm Jim Rogers on behalf
10 of Defendant C.R. Bard.

11 MS. HELM: Good morning. I'm Kate Helm on behalf of
12 the Defendants.

13 MR. CONDO: Good morning. Jim Condo on behalf of the
14 Defendants.

15 MR. DADIKA: And good morning. Greg Dadika from
16 C.R. Bard.

17 THE COURT: All right. Thank you, Counsel.

18 And good morning, ladies and gentlemen who are on the
19 jury panel. Thank you all for being here this morning.

20 Our task this morning is going to be to choose a jury
21 that will consist of nine persons and that will hear and
22 decide this case that you've read something about in the
23 questionnaire that we sent to you.

24 And in order to accomplish that task this morning, we
25 are going to ask you some questions. I'll ask a few general

1 questions at the beginning and then the lawyers may have
2 follow-up questions for you based on your questionnaires,
3 which we have reviewed and which will remain confidential.

4 And at the end of that process, which should take us
5 to about the noon hour, we will choose a jury and excuse the
6 rest of you. We're going to do our best to get through this
7 as quickly as we can so those of you who are not seated on the
8 jury will be able to get back to your lives and the business
9 you need to take care of today.

10 We're going to ask you these questions in addition to
11 the information you've provided so that we can choose the most
12 fair and impartial jury possible to decide this case.

13 Please understand that the questions that are going
14 to be asked of you are not intended to embarrass you or to pry
15 unnecessarily into your personal affairs. Each question is
16 designed to assist us in selecting the jury today.

17 Before we ask you any questions this morning, we're
18 going to place all of you under oath. We do that to make sure
19 we have completely accurate information when we select the
20 jury in this case. Obviously it is very important that you
21 answer the questions that are asked truthfully and completely.
22 Please do not withhold any information in order to be seated
23 on this jury. Please be straightforward in your answers
24 rather than answering them in a way you think that I or the
25 lawyers would expect you to answer.

1 When I ask you a general question at the beginning of
2 this questioning, if your answer to the question is yes,
3 please raise your hand and I will then ask you a few follow-up
4 questions.

5 If your answer to a question is no, you don't have to
6 do anything. We will assume that the answer was no by virtue
7 of the fact that you did not raise your hand.

8 I recognize that it might be difficult for you to
9 stand and speak in front of this large group. It's not easy
10 to talk in front of a large group. But please recognize that
11 all jurors are in the same situation and it is important that
12 you answer every question to which you have relevant
13 information.

14 If you would feel more comfortable responding to a
15 particular question in a less-public setting, just tell me
16 that and we'll wait and ask you that question after we've
17 excused the rest of the jury panel members this morning.

18 When I ask you follow-up questions or when the
19 lawyers ask you questions, they're not going to use your name,
20 they're going to use the number that you've been assigned.

21 The reason we do that is because this discussion we
22 have this morning will someday be on the public record,
23 available to anybody who wants to view it, and we don't want
24 your name with information you've disclosed about yourself in
25 the public record in this day of identity theft. So we're

1 going to be a bit impersonal and refer to you by number, and
2 that way when somebody reads the transcript they'll have no
3 idea who provided the information, and that will help protect
4 your privacy.

5 All right. With that preliminary instruction, I'm
6 going to ask those of you who are on the jury panel to please
7 stand to be sworn.

8 (The jury panel was sworn.)

9 THE COURT: Okay. Please be seated.

10 (The Court and the courtroom deputy confer.)

11 THE COURT: As mentioned at the beginning, well, at
12 least the courtroom deputy mentioned it, my name is
13 Dave Campbell. I'm a United States District Court Judge.

14 Traci Abraham is the courtroom deputy clerk. She'll
15 be keeping us organized and on track during the trial.

16 Tricia Lyons is the court reporter. She's taking
17 down everything that is said during the trial, and there will
18 be a second court reporter helping during the trial by the
19 name of Jennifer Pancratz.

20 My law clerks are Luci Davis, Janet Howe,
21 Jeff Kilmark, and Ahmad Al Dajani.

22 My judicial assistant is Nancy Outley. You'll see
23 her coming in and out during the course of the trial.

24 Do any of you know me or any members of my staff on
25 any basis, social, professional, or otherwise? If so, please

1 raise your hand.

2 I see no hands.

3 The plaintiffs are represented by a number of attorneys.

4 I'm going to ask you, if you would, Mr. O'Connor, to
5 stand again.

6 This is Mark O'Connor from the firm of
7 Gallagher & Kennedy. He is going to be assisted by
8 Paul Stoller from the firm. Mr. Stoller is in the back.

9 Plaintiffs are also represented by Ramon Lopez --
10 If you would stand.

11 -- and Josh Mankoff of the Lopez McHugh firm.

12 Julia Reed Zaic and Laura Smith from the
13 Heaviside Reed Zaic firm are also going to be involved.

14 And Stuart Goldenberg and Marlene Goldenberg of the
15 Goldenberg Law Firm are also going to be participating.

16 Do any of you know these attorneys on any basis?

17 I see no hands.

18 Okay. Go ahead and have a seat.

19 Mr. O'Connor, could you introduce your clients,
20 please.

21 MR. O'CONNOR: Yes, Your Honor. Thank you.

22 Lisa Hyde and Mark Hyde. Would you please stand up.

23 THE COURT: All right. Do any of you know the Hydies
24 on any basis?

25 I see no hands.

1 Okay. Thank you. You can be seated.

2 Defendants are represented in this case by
3 James Condo from the firm of Snell & Wilmer.

4 If you would stand.

5 James Rogers, who is also standing.

6 And Matthew Lerner, Elizabeth Helm, and Richard North
7 from the firm of Nelson Mullins Riley & Scarborough.

8 Do any of you know these individuals on any basis?

9 All right. Mr. Rogers, could you introduce the
10 others who are with you at counsel table.

11 MR. ROGERS: I'd be glad to, Your Honor.

12 With me today is Kate Helm. We're both with the law
13 firm of Nelson Mullins.

14 THE COURT: They actually -- she stood while you were
15 looking that way.

16 MR. ROGERS: Thank you, Your Honor.

17 With us today -- would you please stand -- is
18 Mr. Greg Dadika from C.R. Bard.

19 And, Your Honor, I also want to let the jurors know
20 that at some point Mr. Dadika will have to leave and we will
21 have another attorney here who is with C.R. Bard, and her name
22 is Candace Camarata.

23 THE COURT: All right. And the other gentlemen,
24 would you introduce them too.

25 MR. ROGERS: With us today, too, are Mark Gerard and

1 Mark Linder.

2 THE COURT: All right. Do you know any of these
3 individuals on any basis?

4 I see no hands.

5 Downstairs in the jury room you should have been
6 handed a list of witnesses who may testify in the trial. We
7 don't think all of them will, but a lot of them will.

8 Do any of you think you might know any of the persons
9 who are listed on that witness list? If so, please raise your
10 hand.

11 Hold on just a minute, sir, we're going to bring you
12 a mic.

13 And if you could stand up and identify yourself by
14 your juror number.

15 PROSPECTIVE JUROR: Juror 29. It seems unlikely, but
16 Mark Wilson. I work with someone named Mark Wilson.

17 THE COURT: Okay. Counsel, where is the Mark Wilson
18 witness?

19 Sir, do you work with him here in Arizona?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Is Mark Wilson from Arizona?

22 MR. ROGERS: Yes, Your Honor.

23 Take it back. Ms. Helm is telling me he's not. He's
24 a Bard employee.

25 PROSPECTIVE JUROR: Oh. No.

1 THE COURT: Okay. So if he's a Bard employee, you
2 don't know him; is that correct?

3 PROSPECTIVE JUROR: That's correct.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR: Juror Number 28. And also seems
6 unlikely, but I do work with a physician named John Wheeler
7 that is listed on the sheet.

8 THE COURT: Okay. Counsel, any information?

9 MR. ROGERS: Your Honor, he is also a Bard employee
10 and is not a doctor.

11 THE COURT: Okay. Thanks. That takes care of that.

12 Does anybody else recognize any names on the witness
13 list?

14 I see no other hands.

15 I didn't mention it, ladies and gentlemen, but I
16 will. We're going to take a break about midway through the
17 morning, probably about 10:30, for 15 minutes. Just so you
18 know we're not going to go straight through to noon.

19 We recognize, ladies and gentlemen, that jury service
20 is probably an inconvenience for you, taking you away from
21 your jobs and families and disrupting your daily routine.

22 Jury service is, however, one of the most important
23 duties that citizens of this country can perform. In fact, we
24 have a right to jury in the Constitution of the United States
25 just because of its importance in our justice system.

1 For this reason, from time to time we ask citizens to
2 make sacrifices and serve on juries even when inconvenient.
3 Prospective jurors can be excused from jury service if the
4 length of the trial or the daily schedule would impose an
5 undue hardship. By undue hardship, I mean more than
6 inconvenience. I mean a genuine hardship that would be
7 experienced by you or your family.

8 This trial, as I think we indicated in the
9 questionnaire, is expected to last three weeks. The specific
10 days we are going to be in trial are the following: We're
11 going to be in trial today, for whoever is seated on the jury,
12 through probably 4:30 today; tomorrow, Thursday, and Friday.
13 So the next three days of this week.

14 Next week we're going to start on Monday midday,
15 about 12:30 or 1:00 because of a conflict in the morning. So
16 we'll go Monday afternoon, and then Tuesday through Friday
17 next week with full days.

18 And the week after that we will go the full week,
19 October 1st through October 5th.

20 We have timed the trial. We've allocated time. We
21 are confident we will get the trial done by October 5th.

22 But it will probably go up to the 4th or 5th.

23 The daily schedule will be to start at 9 o'clock in
24 the morning. We will go until noon, take a one-hour break for
25 lunch, resume at 1:00, and go until about 4:30 in the

1 afternoon, and we'll take a 15-minute break in the morning or
2 the afternoon.

3 I know we asked you in the questionnaire whether this
4 would be a hardship and those of you who are here didn't
5 indicate it would be or, if so, we wanted to ask follow-up
6 questions. So my question to you now is whether this schedule
7 or the daily duration of the trial would create an undue
8 hardship for any of you. If so, please raise your hand.

9 Just identify your number, if you would, sir.

10 PROSPECTIVE JUROR: Number 2.

11 THE COURT: Go ahead and tell us the issues.

12 PROSPECTIVE JUROR: I attend college and I'm just a
13 little concerned of how I'm going to keep up with the
14 classwork for three weeks.

15 THE COURT: Are you in college this semester?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: What kind of schedule do you have?

18 PROSPECTIVE JUROR: Tuesday and Thursday I go for
19 like 8:00 to 12:00.

20 THE COURT: Okay. How many classes are you taking?

21 PROSPECTIVE JUROR: Two.

22 THE COURT: Is there any arrangement that can be
23 made -- is that the kind of college you can listen later
24 online or do you have to be in class?

25 PROSPECTIVE JUROR: I currently already paid for the

1 semester, so I don't know how it would be refunded for that.

2 THE COURT: Okay. All right. Thanks for that
3 information.

4 PROSPECTIVE JUROR: Juror 5. Just have a trip
5 planned to California at the end of the month.

6 THE COURT: When were you going to go?

7 PROSPECTIVE JUROR: The last week of the month.

8 THE COURT: Of September?

9 PROSPECTIVE JUROR: Of this month, yes.

10 THE COURT: Is this a trip that can be rescheduled?

11 PROSPECTIVE JUROR: Yeah, I imagine so, but there's
12 already, like, stuff paid for for a fishing trip.

13 THE COURT: Okay. Thanks for that information.

14 PROSPECTIVE JUROR: Juror Number 28. And I have
15 young children that will be going on fall break that last --
16 that first week of October and it would require me to get a
17 babysitter during that time.

18 THE COURT: That's -- what week is that?

19 PROSPECTIVE JUROR: The first week of October.

20 THE COURT: Okay. And is that something that could
21 be arranged for?

22 PROSPECTIVE JUROR: Could be arranged, but I'd prefer
23 not to have to with little kids.

24 THE COURT: Okay. Would it create a particular
25 hardship for you to do that?

1 PROSPECTIVE JUROR: It would be just an extra
2 financial expense that would be required.

3 THE COURT: Okay. Thanks for that information.

4 PROSPECTIVE JUROR: Juror Number 21. I'm a single
5 mother with a three-month-old child and my mother's taking
6 care of him, but I work and generally she already takes care
7 of him those days, and then having to have her take care of
8 him extra days, I cannot financially pay her more than what I
9 do.

10 THE COURT: I'm sorry, I can't hear what you're
11 saying. Can you speak a little louder.

12 PROSPECTIVE JUROR: I'm a single mother with a
13 three-month-old son and I have to take care of him. And my
14 mom already takes care of him during the week for the days
15 that I do work, and she just found out yesterday that she's
16 going to be soon getting a blood transfusion as well, so she's
17 going to have to recuperate from that, and asking her for the
18 extra time to watch my son is really hard.

19 THE COURT: Okay. Do you know when that medical
20 procedure is going to occur?

21 PROSPECTIVE JUROR: Sometime within the next few
22 weeks is what I've been told.

23 THE COURT: When that happens, would she be unable to
24 care for your son?

25 PROSPECTIVE JUROR: It's just -- yeah. Basically.

1 THE COURT: Okay. Thank you for that information.

2 PROSPECTIVE JUROR: 62. I just started a job
3 recently where I provide care and transportation to two
4 children with autism, and that's Monday, Wednesday, and
5 Thursdays. So I take them to school and then I pick them up.
6 And that's because nobody else can take them and pick them up.

7 THE COURT: And what are the times when you need to
8 be on that job?

9 PROSPECTIVE JUROR: I drop them off about 8:15 in the
10 morning and then I have to pick them up around 3:15, 3:10.

11 THE COURT: Okay. Thanks for that information.

12 PROSPECTIVE JUROR: Juror Number 68. I found out
13 middle of last week that the doctors finally come to a
14 conclusion. My wife has to move out this area or lose her
15 lungs, and we're in the process of moving. I need to do that
16 immediately.

17 THE COURT: Okay. We saw --

18 PROSPECTIVE JUROR: Letter to that effect.

19 THE COURT: Yeah. We saw the doctor's letter. It
20 didn't have any timing in it. That was going to be our
21 follow-up question to you. How soon do you need to act on
22 that?

23 PROSPECTIVE JUROR: As soon as possible.

24 THE COURT: So that is something you're going to be
25 doing in the next few weeks?

1 PROSPECTIVE JUROR: Already started packing.

2 THE COURT: Okay. Thanks for that information.

3 PROSPECTIVE JUROR: Juror 70. My personal vehicle
4 broke down on Sunday, and in order to make it up here in a
5 timely manner I had to rent a vehicle, and with the priority
6 that the mechanic has put on my vehicle, I don't know if I'll
7 be able to get it back any time soon. And I live more than
8 170 miles away.

9 THE COURT: Okay. Thanks for that information.

10 PROSPECTIVE JUROR: Juror 106. I recently graduated
11 college and I'm doing my job hunt right now and I have
12 interviews that I have to attend to, and I feel that this jury
13 duty would interfere with me finding a job opportunity.

14 THE COURT: Do you have interviews scheduled?

15 PROSPECTIVE JUROR: Yes, I have an interview
16 scheduled on Thursday.

17 THE COURT: Okay. Is that during the workday?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. Thanks for that information.

20 All right. I will take that information into
21 account, ladies and gentlemen, when we are picking the jury in
22 this case.

23 Do any of you have any other reasons, such as a
24 physical difficulty, or a health problem or home problem that
25 would interfere with your ability to serve on this jury?

1 PROSPECTIVE JUROR: Juror Number 3. I have a hard
2 time hearing, and just in this -- this morning when the
3 attorneys were giving their names, I missed half their names.
4 When this young lady and this gentleman was talking, I didn't
5 understand a word that they said.

6 THE COURT: We might be able to help.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: Try this.

9 PROSPECTIVE JUROR: And when people talk -- besides
10 this, if someone's talking, their back to me, I'm going to
11 lose half the stuff they said unless they're really talking
12 loud. If they talk low, I will lose that conversation as
13 well.

14 THE COURT: Okay. We're going to have people talking
15 into mics. Why don't you put that on right now. Goes just
16 like that.

17 Is that better? Can you --

18 PROSPECTIVE JUROR: Certainly hear you now.

19 THE COURT: Okay. We'll keep people talking in the
20 mics and, if at any time something is happening and you can't
21 hear, raise your hand and we'll fix it.

22 PROSPECTIVE JUROR: I will do that.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: Juror Number 6. I do have a
25 stimulator, a bladder stimulator. It may require a couple of

1 bathroom breaks. But if we can do a break like every two and
2 a half hours, I don't think I'd have any problem. I wanted
3 you to be aware of that.

4 THE COURT: Okay. We should be taking a break every
5 hour and a half or hour and 45 minutes.

6 PROSPECTIVE JUROR: Fantastic.

7 THE COURT: Again, if that becomes an issue, raise
8 your hand and we'll be happy to take a break.

9 PROSPECTIVE JUROR: Juror 15. I have the same
10 problem Juror 3 has. I have hearing aids in right now. But
11 half the people that are talking this morning, I can't hear a
12 word they're saying.

13 THE COURT: Let's see if this helps. Let's try this.

14 This is not an uncommon problem in this courtroom.

15 We'll just wait to see if this helps.

16 All right. Can you hear me --

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Sorry, about that. That dial on the
19 front controls volume, so you can turn it down if you need to.
20 And if at any time you're having trouble hearing, raise your
21 hand.

22 PROSPECTIVE JUROR: (Thumbs-up gesture)

23 THE COURT: By the way, Jurors 3 and 16 -- or 15, I'm
24 sorry, those batteries don't last forever. So you might hear
25 it starting to fade. Raise your hand. As you can see, we've

1 got another bunch up here and we'll give you a fresh one.

2 Yes, ma'am.

3 PROSPECTIVE JUROR: I'm Juror 31. I too, have nerve
4 deafness in my left ear from birth, so my right ear is very
5 good, I can hear, but depending on where they're sitting on my
6 left side, I can barely hear.

7 THE COURT: Why don't we try this with you as well.

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: All right. Can you hear us there?

10 PROSPECTIVE JUROR: Very good.

11 THE COURT: Okay. If that becomes difficult to hear,
12 just raise your hand.

13 PROSPECTIVE JUROR: (Thumbs-up gesture)

14 THE COURT: Any other responses?

15 Yes, sir?

16 PROSPECTIVE JUROR: Juror 51. I have a doctor
17 appointment Thursday afternoon at 4 o'clock.

18 THE COURT: Okay. Is that something that can be
19 rescheduled?

20 PROSPECTIVE JUROR: It's for blood pressure medicine,
21 so I -- they missed the appointment in the last week, so I
22 probably should get to it.

23 THE COURT: Okay. Thanks for that information.

24 PROSPECTIVE JUROR: Number 68. It's not a physical
25 ailment, but I feel that you need to know that I've had

1 information from the Bard system before with my youngest son
2 and --

3 THE COURT: Let me go ahead and interrupt you,
4 Juror 68. I'm going to excuse you at the end of the morning
5 so you can take care of your wife. I'll just let you know
6 that.

7 PROSPECTIVE JUROR: Hello. I'm Number 85. I, too,
8 need a hearing device.

9 THE COURT: Okay. We've got another one.

10 How does that sound?

11 PROSPECTIVE JUROR: (Two thumbs-up gesture)

12 THE COURT: Okay. Great.

13 Any other responses?

14 All right. One of the questions, ladies and
15 gentlemen, that I'll ask you at the end of the morning is
16 whether you know any member of the jury panel. So as folks
17 are standing, just kind of take note of them. Because we'll
18 want to know if any of you have a preexisting relationship so
19 that I can ask you some questions if you happen to know any
20 member of the jury panel.

21 My last question to you before we turn it over to the
22 lawyers is this: Have any of you done any research or been
23 exposed to any information about this case since you filled
24 out your jury questionnaire? If so, please raise your hand.

25 I see no hands.

1 All right. Plaintiffs' counsel, let's go ahead with
2 your questions.

3 MR. O'CONNOR: Thank you, Your Honor.

4 Your Honor, by the way, this is David Wenner and
5 John Campbell, who will be assisting us at this part of the
6 trial.

7 THE COURT: Okay. Say that into the mic.

8 MR. O'CONNOR: I'm sorry. David Wenner and
9 John Campbell.

10 THE COURT: Do any of you know these individuals on
11 any basis?

12 I see no hands.

13 Okay. Go ahead, Mr. O'Connor.

14 MR. O'CONNOR: Thank you.

15 Again, my name is Mark O'Connor and I'm one of the
16 lawyers representing Lisa and Mark Hyde, or the plaintiffs in
17 this case. I'm going to ask you some follow-up questions on
18 what you answered in your questionnaire. And what I'd like
19 you to understand is that the intent of my questions is not to
20 cause you embarrassment. We're just trying to understand so
21 that we can understand who will be fair and impartial in this
22 case. There may be other cases that anybody can be fair and
23 impartial, but that's the purpose of my questions, just to
24 question you and follow up on answers to your questionnaires.

25 So I'll start off with Number 2.

1 I thought I saw that you had some fire science
2 training.

3 PROSPECTIVE JUROR: That's correct.

4 MR. O'CONNOR: And did that involve training in any
5 type of medical care?

6 PROSPECTIVE JUROR: Yes. I currently have my EMT.

7 MR. O'CONNOR: And in the course of that training,
8 did you receive information about blood clots or IVC filters?

9 PROSPECTIVE JUROR: Yes. There's a chapter on blood
10 clots.

11 MR. O'CONNOR: Are you going to have any difficulty
12 setting aside what you learned in those classes in this case
13 when you hear the evidence which will involve medical
14 evidence?

15 PROSPECTIVE JUROR: I don't think it will be a
16 problem.

17 MR. O'CONNOR: I saw that in response to a question
18 that you have a less favorable view about personal injury
19 attorneys and a bit of a higher favorable view for medical
20 device companies. Do you recall that answer?

21 PROSPECTIVE JUROR: Yes.

22 MR. O'CONNOR: Have you had an experience with a
23 personal injury attorney in the past?

24 PROSPECTIVE JUROR: No.

25 MR. O'CONNOR: But do you recall that answer, is that

1 right, Number 2?

2 PROSPECTIVE JUROR: That's correct.

3 MR. O'CONNOR: Obviously the Hydes are represented by
4 lawyers who are personal injury lawyers. I'm a personal
5 injury lawyer. And the other side is a medical device
6 company. Is our side starting out with you leaning slightly
7 against us as we go into this trial?

8 PROSPECTIVE JUROR: Yes.

9 MR. O'CONNOR: In other words, you felt this way long
10 before you came here, that you have less than favorable views
11 about plaintiff attorneys?

12 PROSPECTIVE JUROR: That's correct.

13 THE COURT: Mr. O'Connor, let me interrupt for a
14 minute. I'm glad you asked this question because this is
15 something that I'd like all of the jurors to consider.

16 Juror Number 2, every one of us in this room have
17 life experiences or opinions that could influence a decision
18 in the case if we allowed them to and if we took them into
19 account.

20 We're going to ask jurors to set aside their personal
21 opinions, any biases or preferences or prejudices, and not
22 consider those, but to decide this case solely on the basis of
23 the evidence and the law that they hear during the trial.

24 Do you think you would be able to do that? Or would
25 that be difficult for you to do?

1 PROSPECTIVE JUROR: I think I could probably set
2 aside my opinions.

3 THE COURT: Okay.

4 That's the question that all of you should keep in
5 mind. Mr. O'Connor can inquire into any of them, but the
6 question at the end of the day that I'll ask, if he doesn't,
7 he probably will, is can you set aside those personal views
8 and opinions and not decide on the basis of those, but decide
9 on the basis of the facts and the evidence that you will hear.

10 And you think you could do that, Juror 2?

11 PROSPECTIVE JUROR: I do, yes.

12 THE COURT: Okay. Go ahead, Mr. O'Connor.

13 MR. O'CONNOR: Thank you.

14 And I appreciate that, Number 2. But my question's a
15 little different just in response to your answer about
16 personal injury lawyers. Do you feel, even though you
17 certainly intend to be neutral in this case, that that feeling
18 that you have that is less than favorable about personal
19 injury attorneys could affect how you listen to evidence and
20 affect your feelings about the parties in this case?

21 PROSPECTIVE JUROR: Just going into it, I feel like
22 it kind of affects it, but I'm willing to be open during the
23 case and hear both sides.

24 MR. O'CONNOR: All right.

25 You had indicated that you -- you mentioned that

1 you're against frivolous lawsuits. Do you recall that
2 response?

3 PROSPECTIVE JUROR: Yes.

4 MR. O'CONNOR: And, again, do you feel that simply
5 because a party has brought a claim into court that it's
6 frivolous?

7 PROSPECTIVE JUROR: No.

8 MR. O'CONNOR: When you talk about frivolous
9 lawsuits, can you tell me what you mean?

10 PROSPECTIVE JUROR: Just I've seen a lot of lawsuits
11 that I feel like people are just trying to get money for.
12 They don't really have cause for why they're trying to
13 actually get the money.

14 MR. O'CONNOR: All right. Well, this is going to be
15 a case where the plaintiffs are going to be requesting an
16 award that will involve money damages. Is that difficult for
17 you to sit down and listen and hear and deliberate on a case
18 where money damages are going to be asked for?

19 PROSPECTIVE JUROR: Yes, it would.

20 MR. O'CONNOR: It will be difficult?

21 PROSPECTIVE JUROR: Yes.

22 MR. O'CONNOR: And do you think, knowing that this is
23 a case that involves money damages that, again, that we, the
24 plaintiffs -- you're starting leaning against us, knowing that
25 about our part of the case?

1 PROSPECTIVE JUROR: That's correct.

2 MR. O'CONNOR: And will that affect your ability to
3 be less than neutral when considering the case of Mr. and
4 Mrs Hyde?

5 PROSPECTIVE JUROR: It could potentially be. But,
6 again, I'm willing to listen to both sides during the trial.

7 MR. O'CONNOR: But in fairness, as you said, starting
8 right now, your feelings, you're leaning against our side, the
9 plaintiff side. Is that fair?

10 PROSPECTIVE JUROR: Yes.

11 MR. O'CONNOR: Thank you.

12 Number 3.

13 Can you hear me okay?

14 PROSPECTIVE JUROR: I can hear you fine.

15 MR. O'CONNOR: Thanks. And thank you for coming
16 today.

17 I think you said that you believe that there should
18 be legislative limitations or caps on damages in response to
19 your questionnaire.

20 PROSPECTIVE JUROR: I do.

21 MR. O'CONNOR: And is that a feeling and opinion you
22 developed before you ever came to this courtroom?

23 PROSPECTIVE JUROR: Yes.

24 MR. O'CONNOR: You felt, I thought, that you feel
25 there's extreme awards out there.

1 PROSPECTIVE JUROR: Definitely, yes.

2 MR. O'CONNOR: Does that mean in your mind, sir, that
3 you think that no matter what the case is that there should be
4 a limitation on how much people should be able to recover?

5 PROSPECTIVE JUROR: I think it should be -- like I
6 say, not frivolous. Can I give an example?

7 MR. O'CONNOR: Sure. Please.

8 PROSPECTIVE JUROR: I read the paper, I watch the
9 news, I watch a lot of television, and you see sometimes cases
10 people are given 4-, 5-, \$600 million, 30-, 40 million, in my
11 opinion that they'll never collect on that from the company
12 because I think they'll appeal and it will go on and it's not
13 helping those people.

14 I think if the award is within a reasonable amount,
15 not an excessive amount, the people that are suing and if they
16 win the case they can get their money quicker and go on with
17 their lives.

18 MR. O'CONNOR: Thank you. I appreciate that, sir.

19 Now, at the end of this case, the lawyers that
20 represent the plaintiffs, we will be asking for an award that
21 we believe is fair. But is it conceivable that we may ask for
22 an amount that we believe is fair but you may, because of your
23 feelings that you brought here to court, feel that that is
24 just too high and despite what the law is, you could not award
25 that?

1 PROSPECTIVE JUROR: I have to hear the case, to be
2 perfectly honest. You have to hear what it is. Yeah, if it's
3 an excessive award I may not necessarily vote against the
4 plaintiff or whatever, but I would take that into
5 consideration of -- like I said, I have to hear the case. If
6 it's negligence or however you want to put it, then I may
7 consider it, but extreme or excessive awards, I don't believe
8 in.

9 MR. O'CONNOR: Knowing that we are on the plaintiff
10 side, the side that is claiming damages in this case, are we
11 starting out in sort of an uphill climb with you?

12 PROSPECTIVE JUROR: I don't believe you are. No. I
13 can be objective on this.

14 MR. O'CONNOR: All right. Is there any feeling that
15 you may be leaning against us --

16 PROSPECTIVE JUROR: No.

17 MR. O'CONNOR: -- or being suspicious because we are
18 going to be asking for damages?

19 PROSPECTIVE JUROR: No. None whatsoever.

20 MR. O'CONNOR: All right. Thank you. Appreciate
21 that.

22 Juror Number 6. How are you, sir? Thank you for
23 coming down here today.

24 I thought I read in your answers that you have very
25 strong feelings in favor of corporations. Did I read that

1 correctly?

2 PROSPECTIVE JUROR: I don't think so.

3 MR. O'CONNOR: In terms of -- you, I think, told us
4 before that you have received -- have you received a medical
5 device?

6 PROSPECTIVE JUROR: Yes. It's Medtronic. It's a
7 small computer about the size of a pack of cigarettes. It's a
8 bladder stimulator, and it's inserted into my lower back.

9 MR. O'CONNOR: Does your experience with your medical
10 device, does that affect your ability to hear a case involving
11 a medical device?

12 PROSPECTIVE JUROR: No, not at all.

13 MR. O'CONNOR: Do you have a more favorable view of a
14 medical device company such as Bard, who is a party in this
15 case?

16 PROSPECTIVE JUROR: I don't think so at all.

17 MR. O'CONNOR: Is there anything that you think of
18 that is going to affect your ability in this case to be fair
19 and impartial?

20 PROSPECTIVE JUROR: No, I think I'd be fair and
21 impartial.

22 MR. O'CONNOR: And I don't want to get too far about
23 the things you told us before. Is there anything that you
24 feel about your condition that may cause you to be distracted
25 or not be able to give us your full attention?

1 PROSPECTIVE JUROR: I don't think so. As long as we
2 had a break every two hours, two and a half hours.

3 MR. O'CONNOR: We need those too.

4 Thank you.

5 THE COURT: Thank you, Juror 6.

6 MR. O'CONNOR: Thank you, sir.

7 Number 16. Good morning.

8 And thank you. Thank you for completing your
9 questionnaire and for being forthright with us and understand,
10 again, that my questions are just to follow up with you on
11 your feelings.

12 You have strong feelings against plaintiff --
13 personal injury attorneys; is that correct?

14 PROSPECTIVE JUROR: Yes.

15 MR. O'CONNOR: And it sounds as though that is
16 something that you've carried with you and --

17 PROSPECTIVE JUROR: For the last 30 years. I worked
18 in the emergency room for ten, 15 years.

19 MR. O'CONNOR: I also saw that you have concerns
20 about frivolous lawsuits.

21 PROSPECTIVE JUROR: Who?

22 MR. O'CONNOR: Did you talk about in your answer
23 about greedy attorneys that you feel personal injury --

24 PROSPECTIVE JUROR: No, I didn't -- everything on the
25 survey was personal.

1 MR. O'CONNOR: Okay. But you understand that the
2 plaintiffs in this case, Lisa Hyde and Mark Hyde, they're
3 represented by lawyers, us, and we're personal injury lawyers?

4 PROSPECTIVE JUROR: Sure. I have nothing against
5 personal injury lawyers, but in cases where it matters. But
6 it's -- not matters, but -- I'm strongly pro medical devices
7 because that's what helps thousands and thousands and millions
8 of people to go on with their lives. Every day you get in the
9 car, you don't know whether you get out of it. And yet you
10 get in the car anyway. You know, everything that is there
11 when you get behind the wheel and you get anywhere because
12 you're hoping you're going to get to the different
13 destination.

14 The same thing with medical devices. That's my
15 opinion, though. You're trying to improve your life. You're
16 trying to live longer. They develop those devices, but not
17 everything can be perfect in this world. So, yes --

18 MR. O'CONNOR: So as you started this case, you have
19 strong feelings in favor of medical device companies.

20 PROSPECTIVE JUROR: Yes. They prolong our lives and
21 they help us every single day of our lives. People live
22 longer. And if this person is alive and well, there is no
23 point to this case, in my opinion.

24 MR. O'CONNOR: And you also felt there's too many
25 lawsuits being filed? Did I understand your answer correctly?

1 PROSPECTIVE JUROR: I didn't -- no. See, everybody
2 makes mistakes. It depends, of course, on the mistake,
3 whether it's worth to be sued, but against the company who is
4 trying to improve our lives, who is trying to make us function
5 more, who's trying to keep us with our families longer, I
6 don't see why it needs to be done.

7 MR. O'CONNOR: All right. Is it fair to say that
8 right now, as you sit here, based upon the feelings that
9 you've developed long before you came here that --

10 PROSPECTIVE JUROR: 30 years ago.

11 MR. O'CONNOR: -- you will favor the medical device
12 company in this case?

13 PROSPECTIVE JUROR: Yes.

14 MR. O'CONNOR: And is it also fair that the party
15 here, the plaintiffs that brought the claim against the
16 medical device, you're leaning and have feelings that you
17 can't be as neutral with that party as you can --

18 PROSPECTIVE JUROR: Yes. I won't be neutral. I
19 cannot be.

20 MR. O'CONNOR: So you cannot be fair and impartial.
21 Is that fair?

22 PROSPECTIVE JUROR: Yes.

23 MR. O'CONNOR: Thank you. I appreciate that.

24 PROSPECTIVE JUROR: You're welcome.

25 MR. O'CONNOR: Number 20.

1 You answered some questions about your grandmother.
2 Do you recall that?

3 PROSPECTIVE JUROR: Yes, sir.

4 MR. O'CONNOR: Is that something that you would
5 rather talk about privately?

6 PROSPECTIVE JUROR: No, I'm open to talk about it.

7 MR. O'CONNOR: I thought you said that your
8 grandmother received an IVC filter.

9 PROSPECTIVE JUROR: She has, yes. She had.

10 MR. O'CONNOR: And I'm sorry about your loss.

11 PROSPECTIVE JUROR: Thank you.

12 MR. O'CONNOR: Do you know the company that made that
13 IVC filter?

14 PROSPECTIVE JUROR: I do not.

15 MR. O'CONNOR: But my reading of your questionnaire
16 is that you feel strongly in favor of medical device companies
17 that make filters because of your grandmother's experience.

18 PROSPECTIVE JUROR: That's correct.

19 MR. O'CONNOR: And is it fair to say that that
20 feeling is something that you bring here to court today?

21 PROSPECTIVE JUROR: Yes.

22 MR. O'CONNOR: Do you think that knowing that there's
23 a plaintiff, the plaintiffs here are bringing a claim against
24 a medical device company, that as we're starting out you feel
25 strongly in favor of the medical device company compared to

1 the party bringing the lawsuit?

2 PROSPECTIVE JUROR: I do, just because I've had a
3 first-hand experience with the exact product we're talking
4 about.

5 MR. O'CONNOR: And that's fair, and I appreciate
6 that, and it sounds like what you're saying is you can't set
7 that experience aside when you hear evidence in this case. Is
8 that fair?

9 PROSPECTIVE JUROR: It's fair. It's difficult.

10 MR. O'CONNOR: And it sounds that you just -- as much
11 as you'd like to, you can't be neutral in this case?

12 PROSPECTIVE JUROR: It would be difficult for me.

13 MR. O'CONNOR: So while certainly there's other cases
14 you can be fair and impartial, is it fair to say that this is
15 one that you cannot be fair and impartial?

16 PROSPECTIVE JUROR: I would agree with that just
17 because of the specific product that I've actually, you know,
18 had experience with.

19 MR. O'CONNOR: I appreciate your answer. Thank you.

20 PROSPECTIVE JUROR: Thank you.

21 MR. O'CONNOR: Number 21.

22 I just have a couple questions for you.

23 I noticed, looking at your responses to the
24 questionnaire, and I appreciate you being forthright, but I
25 thought you said in a question about whether you could be a

1 fair and impartial juror you just didn't understand the
2 dynamics of this lawsuit. Do you recall that answer?

3 PROSPECTIVE JUROR: Yes.

4 MR. O'CONNOR: Could you explain what you meant?

5 PROSPECTIVE JUROR: I've never personally had an
6 experience with anyone in my family or friends that have had
7 any filters or any devices put in them so I don't -- I never
8 really researched it and I don't fully understand some things
9 that they're there for or what they exactly do.

10 MR. O'CONNOR: There's going to be evidence in this
11 case that will explain a lot about filters and lot about blood
12 disorders. Are you able to listen to that evidence?

13 PROSPECTIVE JUROR: Yes.

14 MR. O'CONNOR: And sounds as though that whatever you
15 answered in your questionnaire, that you feel that you can be
16 fair and impartial in this case?

17 PROSPECTIVE JUROR: Yeah. If it's really explained
18 and I can understand it, then yes.

19 MR. O'CONNOR: Is there anything that you saw when
20 you read the questionnaire that you thought that bothers you
21 or thought that, you know, I wonder, I don't know that I can
22 set aside my feelings in this case?

23 PROSPECTIVE JUROR: No.

24 MR. O'CONNOR: Okay. Thank you.

25 Number 22.

1 You live in Globe?

2 PROSPECTIVE JUROR: I do.

3 MR. O'CONNOR: I used to drive back and forth.

4 That's a long drive.

5 PROSPECTIVE JUROR: Yes, it is.

6 MR. O'CONNOR: How long is it?

7 PROSPECTIVE JUROR: To here, it's about an hour and a
8 half. But I stayed at a hotel last night.

9 MR. O'CONNOR: All right. If you're selected to be
10 on this case, is that drive back and forth going to be a
11 hardship for you?

12 PROSPECTIVE JUROR: No, I'll be staying in a hotel
13 here.

14 MR. O'CONNOR: All right. Now, I saw you worked --
15 did I read that correctly, you work in HR?

16 PROSPECTIVE JUROR: Yes, sir, I'm an HR director.

17 MR. O'CONNOR: And I also thought that I saw in your
18 response that you have some responsibility for risk management
19 administration.

20 PROSPECTIVE JUROR: Yes, sir. It's mainly the
21 property and casualty, but I also oversee the employee
22 benefits.

23 MR. O'CONNOR: When you say property and casualty, do
24 you get involved in claims, injury claims?

25 PROSPECTIVE JUROR: It is more my risk management

1 associate. I have a staff, and then it goes to that insurance
2 company, and then they give us their decisions. I don't get
3 very involved in the claims.

4 MR. O'CONNOR: But do you have any involvement in
5 claims against the county? You work for the county; is that
6 correct?

7 PROSPECTIVE JUROR: Correct. I do work for Gila
8 County. Only what claims get sent to our insurer.

9 MR. O'CONNOR: And your experience, just to what
10 extent it is, being involved in claims and knowing that people
11 have brought claims for all sorts of cases against the county,
12 how does that affect you? Does that affect you coming to a
13 case where there's going to be a claim for injuries against
14 the medical device company?

15 PROSPECTIVE JUROR: No, I don't believe so. I feel
16 that my job, I'm kind of the liaison between the management of
17 the county and the employees, and my job is to protect both.
18 So I, actually on a daily basis, make decisions, but they're
19 all decided on evidence, witnesses, documentation. Anything
20 outside of that is just hearsay. I have to make sure I have
21 the facts.

22 MR. O'CONNOR: All right. So do you actually get
23 involved in the evaluation of claims and evidence to support
24 or not support claims?

25 PROSPECTIVE JUROR: Not very often. If it goes to

1 the level of needing to be -- our county attorney would step
2 in. I would not be involved. Very rarely am I involved in
3 anything like that.

4 MR. O'CONNOR: Is there anything about those
5 experiences in handling claims that you feel you may not be
6 able to set aside in hearing the evidence in this case?

7 PROSPECTIVE JUROR: Oh, no. No. Not at all.

8 MR. O'CONNOR: You did -- I thought you indicated
9 there there's too many lawsuits.

10 PROSPECTIVE JUROR: I'm sorry?

11 MR. O'CONNOR: I thought you indicated that you feel
12 there's too many lawsuits.

13 PROSPECTIVE JUROR: I probably, like the juror behind
14 me, just frivolous ones where, you know, I order hot coffee
15 and I spill it on my leg and now I'm going to sue somebody
16 because it was hot. I mean, that's the type of thing I mean.
17 I knew it was hot.

18 MR. O'CONNOR: I understand. Well, there's no hot
19 coffee in this --

20 PROSPECTIVE JUROR: No, I don't.

21 MR. O'CONNOR: Is there something about that feeling,
22 too many lawsuits, that you think it may cause you to be
23 suspicious or have questions as you get in and you hear this
24 case that it may suddenly dawn on you, you just feel you can't
25 be fair?

1 PROSPECTIVE JUROR: No, sir. Like I said, even in my
2 own job, until I have evidence and until I've listened to
3 witnesses, I have no view one way -- I try to be very neutral
4 until I have all of the evidence before me. It's imperative
5 to my job.

6 MR. O'CONNOR: All right. Thank you.

7 PROSPECTIVE JUROR: Thank you.

8 MR. O'CONNOR: And Number 23.

9 How are you?

10 PROSPECTIVE JUROR: Good morning.

11 MR. O'CONNOR: Did I read correctly that you're a PE
12 teacher?

13 PROSPECTIVE JUROR: Yes, I am.

14 MR. O'CONNOR: Is your husband a firefighter?

15 PROSPECTIVE JUROR: Yes, he is.

16 MR. O'CONNOR: And does he talk to you about being
17 out there in his job and what he sees out there?

18 PROSPECTIVE JUROR: He does.

19 MR. O'CONNOR: Anything about what your husband does
20 or what you do that you feel may affect your ability to be
21 neutral or not so neutral in a case where we have a party
22 that's bringing a claim for damages against a medical device
23 company?

24 PROSPECTIVE JUROR: No, I would be very neutral.

25 MR. O'CONNOR: You've had -- you sat on two juries

1 before.

2 PROSPECTIVE JUROR: Yes, I have.

3 MR. O'CONNOR: Were you the foreperson?

4 PROSPECTIVE JUROR: I was not.

5 MR. O'CONNOR: One, I think, was in district court in
6 this building?

7 PROSPECTIVE JUROR: Yes, in the early '90s.

8 MR. O'CONNOR: What type of case was that?

9 PROSPECTIVE JUROR: It was a criminal case.

10 MR. O'CONNOR: Are you able to tell us the results of
11 that?

12 PROSPECTIVE JUROR: It was -- the guy had committed a
13 murder, but on the Arizona side he had lied on the application
14 for a gun and was in possession of and -- and things of those
15 sorts.

16 MR. O'CONNOR: And what was the outcome?

17 PROSPECTIVE JUROR: He was found guilty.

18 MR. O'CONNOR: And then your other case, was that a
19 civil case?

20 PROSPECTIVE JUROR: It was a civil case.

21 MR. O'CONNOR: And was that in a superior court?

22 PROSPECTIVE JUROR: Arizona court.

23 MR. O'CONNOR: And what type of case was that?

24 PROSPECTIVE JUROR: It was a Tempe businessman and a
25 sporting goods company in the midwest.

1 MR. O'CONNOR: Was it a contract or did it involve
2 injuries at all?

3 PROSPECTIVE JUROR: It did not involve injuries. It
4 was all based on boat motors.

5 MR. O'CONNOR: I think you said your experience on
6 both of those was favorable?

7 PROSPECTIVE JUROR: Yes.

8 MR. O'CONNOR: Now, and again, if this is something
9 that you're not comfortable talking about, please let me know,
10 but I saw that your dad, your father had issues with deep vein
11 thrombosis.

12 PROSPECTIVE JUROR: Yes, he had.

13 MR. O'CONNOR: And do you know how he was treated?

14 PROSPECTIVE JUROR: His was all treated with
15 medication.

16 MR. O'CONNOR: Okay. Knowing this is going to
17 involve medical testimony on issues that relate to DVTs and
18 filters, is there anything about your dad or your experience
19 with your father that would affect your ability to be fair and
20 impartial?

21 PROSPECTIVE JUROR: Not at all. Not at all.

22 MR. O'CONNOR: All right. Thank you. I appreciate
23 that.

24 THE COURT: Counsel, could you approach for just a
25 minute.

1 Ladies and gentlemen, if you want to stand up for a
2 minute while we talk, but don't go anywhere. But feel free to
3 stand up for just a minute.

4 (Bench conference as follows:)

5 THE COURT: I wanted to point out you've taken 25
6 minutes to cover 12 jurors. And by my calculation, at this
7 rate you will have more than two hours of questioning. I know
8 you need to cover what you need to cover, but I think we need
9 to pick up the pace. Otherwise we're not going to be through
10 jury selection until 4 o'clock.

11 MR. O'CONNOR: I'll move along.

12 THE COURT: Okay. Thanks.

13 (Bench conference concludes.)

14 THE COURT: Thank you all.

15 MR. O'CONNOR: Number 25.

16 I thought I read in your questionnaire you don't want
17 to sit as a juror. Did I read that correctly?

18 PROSPECTIVE JUROR: Yes.

19 MR. O'CONNOR: And why is that?

20 PROSPECTIVE JUROR: I've never been a juror before.

21 MR. O'CONNOR: Is it something that you feel you
22 would prefer not to do in this case, is to be here for three
23 weeks listening to this case?

24 PROSPECTIVE JUROR: Yes.

25 MR. O'CONNOR: And do you think that knowing that you

1 don't want to be here could affect your ability to be fair and
2 impartial?

3 PROSPECTIVE JUROR: Probably not. No.

4 MR. O'CONNOR: But you would prefer not to be here?

5 PROSPECTIVE JUROR: Right.

6 MR. O'CONNOR: All right. Thank you.

7 Number 28.

8 Do you work in a health care profession?

9 PROSPECTIVE JUROR: I do.

10 MR. O'CONNOR: And I thought you said you know
11 somebody who works for Bard.

12 PROSPECTIVE JUROR: I do.

13 MR. O'CONNOR: And what does that person do?

14 PROSPECTIVE JUROR: She's a sales rep that brings in
15 products. I work in a operating room as a nurse. She brings
16 in products to our operating room.

17 MR. O'CONNOR: Okay. And is she somebody you deal
18 with on a regular basis?

19 PROSPECTIVE JUROR: That's correct.

20 MR. O'CONNOR: Can you tell us her name?

21 PROSPECTIVE JUROR: Her name is Andrea Urlaub.

22 MR. O'CONNOR: And knowing that this is a case
23 against Bard -- are you friends with her?

24 PROSPECTIVE JUROR: I mean, not like we've ever gone
25 anywhere together. Just acquaintances, I would say.

1 MR. O'CONNOR: Do you think it will be difficult for
2 you knowing that she works for the company, Bard, who is also
3 a defendant in this case? Do you think it would be difficult
4 for you to find against Bard and have to go back and see her
5 at work sometime?

6 PROSPECTIVE JUROR: No, I don't.

7 MR. O'CONNOR: All right. You're in nursing.

8 PROSPECTIVE JUROR: Correct.

9 MR. O'CONNOR: You've had a lot of experience in
10 medical and nursing issues.

11 PROSPECTIVE JUROR: Um-hmm.

12 MR. O'CONNOR: How are you going to -- are you going
13 to be able to set those -- what you've learned in your
14 experience aside in listening to the evidence in this case?

15 PROSPECTIVE JUROR: I believe I would be able to.

16 MR. O'CONNOR: Thanks.

17 Number 29.

18 It looked as though that you have stronger better --
19 more favorable feelings for medical device companies than you
20 do for personal injury lawyers. Do I read that correctly?

21 PROSPECTIVE JUROR: I can imagine that I would have
22 written that. I mean, in filling out the questionnaire. But,
23 I mean, if we listen to what has -- the questions you've asked
24 already, I don't have any problem being impartial in this
25 case.

1 MR. O'CONNOR: All right. Thanks.

2 And Number 30.

3 You feel that there's too many lawsuits and that
4 money damages awards have been too high. Did I read your
5 answers correctly?

6 PROSPECTIVE JUROR: Yes.

7 MR. O'CONNOR: And I think you also feel that there
8 should be legislative caps, reforms, limitations on the amount
9 of damages that people should ask for.

10 PROSPECTIVE JUROR: Yes.

11 MR. O'CONNOR: That, to me, seems like that was a
12 strong feeling that you had long before you came here today.

13 PROSPECTIVE JUROR: Sure.

14 MR. O'CONNOR: Knowing that and the way you feel, do
15 you have limitations in your mind that anything above that is
16 just too much?

17 PROSPECTIVE JUROR: For this particular case, no,
18 because I don't know anything about it. I just think if
19 you -- anybody who looks at the internet, reads something
20 on -- you know, newspaper, reads -- sees the news, there are
21 cases that make you go how did a jury ever come up with that
22 number. It just doesn't seem like a reasonable outcome. So I
23 don't think it would affect a specific case. I mean, I just
24 think -- I don't know, life situations. You come up with
25 opinions.

1 MR. O'CONNOR: But in this case we have a party, the
2 plaintiffs are going to be asking for money damages. Does
3 that concern you or cause you to be more suspicious of them
4 before we even start?

5 PROSPECTIVE JUROR: Not at all.

6 MR. O'CONNOR: Do you think there's anything about
7 your feelings about the need for limitations on damages that
8 would affect your ability to be fair and impartial here?

9 PROSPECTIVE JUROR: No.

10 MR. O'CONNOR: Okay. Thank you.

11 Number 32.

12 Just the question -- I see you're from Payson.
13 You're going to be traveling quite a distance every day. Will
14 that cause you any difficulty?

15 PROSPECTIVE JUROR: I'll be staying at a hotel.

16 MR. O'CONNOR: Pardon me?

17 PROSPECTIVE JUROR: I'll be staying at a hotel.

18 MR. O'CONNOR: So you don't see that travel's going
19 to impose any problem for you?

20 PROSPECTIVE JUROR: No.

21 MR. O'CONNOR: Thank you.

22 Number 46.

23 Good morning. Thank you for coming.

24 You had indicated that you felt that you would not be
25 able to be fair and impartial because of what you called your

1 concern about unscrupulous companies and greedy individuals.
2 Did I read your answers correctly?

3 THE COURT: Sir, can you hold the mic up closer.
4 Thank you.

5 PROSPECTIVE JUROR: Really depends. I've seen cases
6 on both sides. I've seen -- I've heard -- I've heard cases
7 like spilling coffee on one side and of course pop culture
8 movies like Rainmaker. There are -- there are those cases on
9 both sides. That's what my feeling.

10 MR. O'CONNOR: Well, right now as you sit here today,
11 do you feel you can be neutral, listen to the evidence?

12 PROSPECTIVE JUROR: I do. But I have to mention that
13 I -- I was a brought up --

14 THE COURT: Pardon me, sir, could you --

15 PROSPECTIVE JUROR: -- you know, in a different
16 culture. So in a country that was entirely different system,
17 a communist country where the system works entirely
18 differently. So I've been living in this country for over 20,
19 30 years. I have tried -- I'm sure I have adapted to the
20 cultures in this country, but I'm afraid that subconsciously
21 I'm not sure whether those values that was deep inside me
22 would come up. So I don't know.

23 MR. O'CONNOR: Well, I appreciate that. And it
24 sounds like you recognize there's differences from the
25 experience where you grew up and where you live now; is that

1 right?

2 PROSPECTIVE JUROR: Yes. Correct.

3 MR. O'CONNOR: Do you think just with your background
4 and your experience in the country where you were born and
5 raised that it will be hard to set aside your life and what
6 you've learned and that culture, it would be difficult for you
7 to set that aside in listening to a case here where a party,
8 if proven, is allowed to recover damages from a party who is
9 proven to be at fault?

10 PROSPECTIVE JUROR: I wouldn't say it's difficult,
11 but it's something I have to be very conscious of all the
12 time. In the culture where I grew up, if you are found guilty
13 and even if you are sentenced to death, there are very few
14 people that would repeal the court, the ruling. This is the
15 case even today. So those are the -- this was the atmosphere
16 where I was brought up. I'm conscious that this is not our
17 value, so I'm just conscious of the differences.

18 MR. O'CONNOR: And you understand this is a civil
19 case not a criminal case?

20 PROSPECTIVE JUROR: I understand.

21 MR. O'CONNOR: All right. Thank you.

22 Number 50.

23 Good morning.

24 PROSPECTIVE JUROR: Morning.

25 MR. O'CONNOR: I think I saw where you answered that

1 you have very strong feelings in favor of medical device
2 companies. Did I read that correctly?

3 PROSPECTIVE JUROR: Yes.

4 MR. O'CONNOR: And that's something -- that's a
5 belief and a feeling that you brought to this court that you
6 developed long before you came here. Fair?

7 PROSPECTIVE JUROR: Yes.

8 MR. O'CONNOR: And you also indicated that you have
9 difficulties because you feel that most lawsuits are brought
10 against big companies or people of wealth. Did I read that
11 correctly?

12 PROSPECTIVE JUROR: Yes.

13 MR. O'CONNOR: And it sounds as though that's
14 something you're concerned about when you hear about any type
15 of a civil lawsuit.

16 PROSPECTIVE JUROR: Correct.

17 MR. O'CONNOR: And something that you just can't set
18 aside no matter what the evidence would be in a case like
19 this. Is that fair?

20 PROSPECTIVE JUROR: No, I don't think so. I think I
21 would be able to -- they're all individual cases.

22 MR. O'CONNOR: Knowing that there's a case that is
23 brought against a medical device company, do you feel, though,
24 your feelings strongly in favor of that, of a medical device
25 company, that that will affect your ability as you start this

1 case? In other words, the party suing the medical device
2 company is starting with you leaning somewhat against us?

3 PROSPECTIVE JUROR: No.

4 MR. O'CONNOR: Is there anything about your feelings
5 about awards being too high that you feel would affect your
6 ability to listen to the evidence in this case?

7 PROSPECTIVE JUROR: No.

8 MR. O'CONNOR: You support legislative reform caps on
9 damages?

10 PROSPECTIVE JUROR: No.

11 MR. O'CONNOR: I thought I read that you felt that
12 the judicial system should not be used for people to get money
13 for retirement. Did I read that correctly?

14 PROSPECTIVE JUROR: Not necessarily just retirement,
15 but just in general.

16 MR. O'CONNOR: And again, that's a feeling that you
17 developed long before you came here?

18 PROSPECTIVE JUROR: Absolutely.

19 MR. O'CONNOR: And does that mean, though, that you
20 have concerns or questions or suspicions about people who are
21 going to request money damages in a lawsuit?

22 PROSPECTIVE JUROR: No, because I haven't heard the
23 case yet.

24 MR. O'CONNOR: Are there any type of damages you
25 think you just simply don't believe should be recovered, such

1 as pain and suffering?

2 PROSPECTIVE JUROR: No.

3 MR. O'CONNOR: All right. Anything about your
4 answers, about your life experiences that you think will
5 affect your ability to be neutral or fair and impartial in
6 this case?

7 PROSPECTIVE JUROR: I don't think so.

8 MR. O'CONNOR: Okay. Thank you, sir. Appreciate
9 that.

10 Number 51.

11 PROSPECTIVE JUROR: Good morning.

12 MR. O'CONNOR: Good morning. Thank you for coming.

13 You, too, sir, I thought I saw that you feel that
14 there are too many lawsuits and the awards are too high.

15 PROSPECTIVE JUROR: I may have answered it that way
16 on the questionnaire, but they're all different.

17 MR. O'CONNOR: I thought I read that you support
18 legislative reform for caps on damages?

19 PROSPECTIVE JUROR: I probably in general would agree
20 with that statement, yes.

21 MR. O'CONNOR: Do you have a limit in mind where you
22 think anything above that is just too much, no matter what the
23 evidence showed?

24 PROSPECTIVE JUROR: Despite what I think, every case
25 is different.

1 MR. O'CONNOR: Now, it's possible that the plaintiffs
2 in this case may ask this jury to award an amount of money
3 that we believe is fair. Is there a risk or a chance that
4 that amount that we're asking for, you may feel that, no, I've
5 got to go back to my feeling I think that limitations should
6 be imposed in this case?

7 PROSPECTIVE JUROR: I think I can get past any
8 personal bias.

9 MR. O'CONNOR: Right. Do you have personal bias
10 against money damages as you start out?

11 PROSPECTIVE JUROR: No.

12 MR. O'CONNOR: Thank you.

13 Number 52.

14 PROSPECTIVE JUROR: Yes.

15 MR. O'CONNOR: You have less than favorable views for
16 personal injury attorneys in response to your questionnaire.
17 Do you recall that?

18 PROSPECTIVE JUROR: That sounds correct.

19 MR. O'CONNOR: And obviously the Hydes are
20 represented by personal injury lawyers. Does that mean that
21 in your mind that you're already leaning against this side
22 compared to the medical device company?

23 PROSPECTIVE JUROR: I think it would be the burden of
24 proof might be higher on you with my prejudices.

25 MR. O'CONNOR: So you would, just because of your

1 feeling, would hold us --

2 THE COURT: Excuse me, Mr. O'Connor. Mr. O'Connor,
3 could you just hold that mic up a little closer.

4 MR. O'CONNOR: Okay.

5 THE COURT: Thank you.

6 MR. O'CONNOR: I think you said that you feel you
7 would probably hold to us a higher burden.

8 PROSPECTIVE JUROR: Yes, I think that's correct.

9 MR. O'CONNOR: Meaning we're starting behind or
10 you're leaning against us at the start.

11 PROSPECTIVE JUROR: I think so. I mean, I would make
12 every attempt to be impartial.

13 MR. O'CONNOR: But as you sit here today, you just
14 don't know if you can be fair and impartial.

15 PROSPECTIVE JUROR: Yes.

16 MR. O'CONNOR: Is that correct?

17 PROSPECTIVE JUROR: Yes, that's correct.

18 MR. O'CONNOR: All right. Thank you.

19 Number 68.

20 I'm sorry, sir. I don't need to talk to you. Thank
21 you. I would love to but I don't need to right now.

22 Your Honor, may I take a moment to consult --

23 THE COURT: Yeah.

24 Actually, why don't we go ahead and take a break.

25 But before you stand up and walk out, ladies and gentlemen,

1 let me mention a couple of things to you.

2 First, please don't talk to each other or anybody
3 else about this case during the break. That's an instruction
4 I'm going to give the jury from now until the end of trial so
5 that you're not influenced by other views that you might hear.

6 Second, please put that sheet with the number on it
7 that you have on your seat so that when you come back in you
8 sit in the same place.

9 As you go out the doors, there are bathrooms on this
10 floor in both directions and on the two floors below.

11 We apologize for the heat in the atrium outside. You
12 can talk to the architect about that.

13 And we will resume at quarter to 11:00. 10:45. If
14 you could be back in your seats by then, we would appreciate
15 it.

16 Thank you all.

17 (Recess taken from 10:29 to 10:44. Proceedings resumed
18 in open court with the jury panel present.)

19 THE COURT: Please be seated.

20 Counsel, approach just a minute, please.

21 (Bench conference as follows:)

22 THE COURT: Counsel, I understand Juror Number 68 was
23 trying to assertively speak with counsel during the break.
24 He's the guy we're going to excuse because of his wife's
25 illness. I think we just ought to go ahead and excuse him

1 now.

2 MR. ROGERS: Mark, you look like you don't know
3 what's going on.

4 MS. HELM: Julia -- he tried to engage in a
5 conversation. And I was present, I saw her cut it off.

6 THE COURT REPORTER: Counsel, I can't hear.

7 THE COURT: Right. So my thought is I won't do it at
8 this moment because I don't want him to think we've been up
9 here talking about him, but in five or ten minutes I'll look
10 at the clock and say we'll excuse you, Juror 68.

11 MR. O'CONNOR: That's fine.

12 Let me give you an update. I have two quick
13 follow-ups and then I'm done. 28 and 29 for two follow-ups
14 that I missed.

15 THE COURT: Okay. That's fine.

16 (Bench conference concludes.)

17 THE COURT: Thank you, ladies and gentlemen. We will
18 continue.

19 MR. O'CONNOR: Thank you. I'm almost done here.

20 Number 29, I apologize, I just wanted to follow up on
21 one area with you.

22 And, again, I just want to ask about questions you
23 answered about your family members, and if it's something you
24 feel you can't talk to in open court, let me know, but --

25 PROSPECTIVE PROSPECTIVE JUROR: Okay.

1 MR. O'CONNOR: -- my question was it sounds as though
2 there were family members, I think your dad, had issues with
3 DVTs. Did we read that correctly?

4 PROSPECTIVE PROSPECTIVE JUROR: Yeah. He had a
5 blood -- he had a blood clot.

6 MR. O'CONNOR: Was he treated with any type of
7 filter?

8 PROSPECTIVE PROSPECTIVE JUROR: No, not that I'm
9 aware of. I think it was only medication.

10 MR. O'CONNOR: All right. Thanks. That's all I had.

11 PROSPECTIVE PROSPECTIVE JUROR: Okay.

12 MR. O'CONNOR: And then Number 28. I had follow-up
13 with you. And, again, thank you.

14 Just going back to Bard filters, you're in the
15 operating room, I believe; is that correct?

16 PROSPECTIVE PROSPECTIVE JUROR: That's correct.

17 MR. O'CONNOR: And you probably have been involved
18 with filters in your practice as a nurse.

19 PROSPECTIVE PROSPECTIVE JUROR: Yes, as just a floor
20 nurse when I was working at the heart hospital next door to
21 the current hospital where I work, but in my operating room
22 right now we don't do any cardiac things, so I don't have any
23 current working with filters.

24 MR. O'CONNOR: Do you feel that you have a favorable
25 impression of Bard products, medical devices?

1 PROSPECTIVE PROSPECTIVE JUROR: I do not.

2 MR. O'CONNOR: And so the relationship you have with
3 that sales rep, does that affect you at all in how you feel
4 about one company that makes products versus another?

5 PROSPECTIVE PROSPECTIVE JUROR: It does not.

6 MR. O'CONNOR: All right. Thank you.

7 That's all, Your Honor. Thank you.

8 THE COURT: Okay. Thanks.

9 Defense counsel, your questions.

10 MR. ROGERS: Thank you, Your Honor.

11 THE COURT: As Mr. Rogers is walking up, Juror 68,
12 I'm thinking of you packing up. We'll go ahead and excuse you
13 now. There's no point having you remain the rest of the
14 morning. Why don't we go ahead and let you go. And best of
15 luck to your wife.

16 PROSPECTIVE PROSPECTIVE JUROR: Thank you.

17 THE COURT: Mr. Rogers, you may proceed.

18 MR. ROGERS: Thank you, Your Honor.

19 Can everybody hear me okay? Can everybody in the
20 back hear me okay?

21 All right. Thank you.

22 I'm going to try to be fairly brief, but
23 Juror Number 4, I'd like to start with you, please.

24 I'd like to understand, if it's okay with you, a
25 little bit more about what you do. And let me ask you first

1 of all -- and I'm sorry, I didn't mean to cut you off -- but I
2 wasn't clear what the name of the company was that you work
3 for. Can you explain that to us.

4 PROSPECTIVE JUROR: I currently work with IQVIA. I'm
5 actually a clinical research associate. One of my clients --
6 my company's clients is Amgen Pharmaceutical, so we make
7 drugs -- Amgen Pharmaceutical make drugs. So I'm a clinical
8 research associate. I go to different locations where they're
9 having studies, clinical trials, and I make sure that the
10 study sites are adhering to protocol and they don't deviate
11 from the protocol. I have a protocol division and have to
12 report to IRB, which is Institutional Review Board. I also
13 make sure the subjects are given the right drugs and that the
14 site is approved to conduct the trial.

15 MR. ROGERS: And so you are involved in multiple
16 different sites; is that correct?

17 PROSPECTIVE JUROR: Yes, every week I go to different
18 location.

19 MR. ROGERS: And as part of that, it sounds like
20 maybe you have sort of an inspection function, would that be
21 accurate, to make sure everything is being done appropriately?

22 PROSPECTIVE JUROR: Yes, according to the protocol.

23 MR. ROGERS: And I believe from your background you
24 have a master's in business; is that correct?

25 PROSPECTIVE JUROR: Yes. I also just completed my

1 masters in clinical research last month.

2 MR. ROGERS: Let me ask you specifically, and I may
3 have misread what you wrote, but I believe you put on your
4 questionnaire that you are a CRA monitor. Is that accurate?

5 PROSPECTIVE JUROR: Yes. Yes. It can be used
6 interchangeably. You can say clinical research associate or
7 you can say a monitor. It's the same thing.

8 MR. ROGERS: So when you say monitor, can you explain
9 what you mean by that term.

10 PROSPECTIVE JUROR: Again, as a monitor I go to
11 different locations where they're having clinical trials, I
12 make sure that the -- we refer to the patient as subjects. We
13 don't know them by name. My job is to make sure that the site
14 is adherent to protocol, making sure that the site, the
15 doctor, the principal investigators, and clinical study
16 coordinators, adhere to protocol, they're giving the subjects
17 the right medication, the investigational product, and that
18 the site is appropriately approved by the Institutional Review
19 Board to conduct that trial.

20 MR. ROGERS: In your work, do you have a lot of
21 contact with doctors who are involved in running the clinical
22 studies?

23 PROSPECTIVE JUROR: Absolutely.

24 MR. ROGERS: I believe you said that the entity that
25 you work for, the company, that they do clinical trials for

1 Amgen; is that right?

2 PROSPECTIVE JUROR: Yes.

3 MR. ROGERS: Is that the only company they do
4 clinical trials for?

5 PROSPECTIVE JUROR: I'm sorry, what's your question
6 again?

7 MR. ROGERS: I'm sorry. Is Amgen the only company
8 that your company does clinical trials for?

9 PROSPECTIVE JUROR: I'm only involved in the Amgen
10 product, Amgen studies. Like I said, my company right now is
11 IQVIA, which was merged with IMC. Used to be Quintiles. I
12 know I have other colleagues that work with other, we call it
13 FSP, which means other sponsors. But for me, I specifically
14 work on the Amgen trials.

15 MR. ROGERS: And does your company do any clinical
16 trials for any medical device companies?

17 PROSPECTIVE JUROR: Not that I know of.

18 MR. ROGERS: All right. Thank you, Juror Number 4.

19 Juror Number 18, would you mind if I asked you a
20 couple of questions?

21 And, ma'am, again, I'm trying to understand what it
22 is that you do. Can you first explain for me who the company
23 is you work for and what they do.

24 PROSPECTIVE JUROR: That's Standard Aero.

25 THE COURT: Excuse me, ma'am, can you hold the mic up

1 closer.

2 PROSPECTIVE JUROR: It's Standard Aero. It's a
3 plating company where we do chemicals for airplanes.

4 MR. ROGERS: And so can you explain for us what your
5 job is, what you do on a day-to-day basis.

6 PROSPECTIVE JUROR: We prepare parts for aircrafts.
7 So chemical -- so platers do the chemical part for the parts
8 for the airplanes.

9 MR. ROGERS: And are you involved yourself in
10 handling the chemicals?

11 PROSPECTIVE JUROR: No.

12 MR. ROGERS: So day-to-day what it is that you do?
13 More administrative or more hands-on?

14 PROSPECTIVE JUROR: More hands-on.

15 MR. ROGERS: And can you try to tell me a little bit
16 more about that.

17 PROSPECTIVE JUROR: Well, we just prepare parts for
18 chemicals, like putting tape on the areas where they're not
19 going to be plating.

20 MR. ROGERS: Ma'am, I believe you indicated on your
21 questionnaire that you had a family member that was involved
22 in a lawsuit; is that right?

23 PROSPECTIVE JUROR: Yes.

24 MR. ROGERS: Would you mind if I asked you a question
25 about that? Is that okay?

1 PROSPECTIVE JUROR: That's okay.

2 MR. ROGERS: I understand it was your father; is that
3 correct?

4 PROSPECTIVE JUROR: Yeah, that's my father.

5 MR. ROGERS: And am I correct that he brought a suit
6 that sounds like a medical malpractice suit; is that right?

7 PROSPECTIVE JUROR: Yes.

8 MR. ROGERS: And is there anything about that
9 experience, having seen your father go through that, that you
10 think would lead you to be unfair or impartial in this case?

11 PROSPECTIVE JUROR: No.

12 MR. ROGERS: Do you think you could listen to all the
13 evidence and be fair to both sides?

14 PROSPECTIVE JUROR: Yes.

15 MR. ROGERS: Okay. Thank you, ma'am.

16 Juror Number 25, please.

17 Ma'am, again, I'm trying to understand what it is
18 that you do. I believe you said that you worked for Banner
19 Wound Care; is that correct?

20 PROSPECTIVE JUROR: Yes.

21 MR. ROGERS: And I think your questionnaire said that
22 you were a medical scheduler; is that right?

23 PROSPECTIVE JUROR: Yes. I schedule the new patients
24 that come into our clinic.

25 MR. ROGERS: So as part of your job, do you have a

1 lot of contact directly with patients?

2 PROSPECTIVE JUROR: No. It's over the phone.

3 MR. ROGERS: And how about doctors, do you have a lot
4 of day-to-day contact with doctors?

5 PROSPECTIVE JUROR: Yes, doctors that come into our
6 clinic.

7 MR. ROGERS: And so what sort of interactions would
8 you have with those medical professionals?

9 PROSPECTIVE JUROR: Just if we're -- if I have an
10 authorization pending for a patient that's coming in. Not
11 really too much.

12 MR. ROGERS: So would you consider it more
13 administrative? Would that be accurate?

14 PROSPECTIVE JUROR: Yes.

15 MR. ROGERS: Okay. Thank you, ma'am.

16 Poor Juror 28, you've been on your feet a lot.

17 I do want to understand a little bit more about what
18 you do. I think you said that you were a circulating nurse;
19 is that correct?

20 PROSPECTIVE JUROR: That's correct, yes.

21 MR. ROGERS: Can you tell me what it is you do, kind
22 of day in and day out what your responsibilities are.

23 PROSPECTIVE JUROR: Day in, day out I prepare the
24 operating room for the particular surgery that we're going to
25 be doing. Myself and scrub tech set up the room, get

1 everything counted appropriately, and then I go out to the
2 preop area and actually interview the patient along with the
3 anesthesiologist, find out their health history. And once we
4 see the surgeon, I bring the patient actually back to the
5 operating room, assist in getting them off to sleep. And then
6 during the surgery, get anything that we might need during it.
7 And then also I'm responsible for all the charting during the
8 surgery. And then when we're all done, I take the patient out
9 to the recovery room. And then do that 12 more times.

10 MR. ROGERS: And do you have contact with multiple
11 representatives from medical device companies?

12 PROSPECTIVE JUROR: That's correct.

13 MR. ROGERS: Not just a person from C.R. Bard; is
14 that right?

15 PROSPECTIVE JUROR: That's correct.

16 MR. ROGERS: And are they kind of in and out of there
17 all the time?

18 PROSPECTIVE JUROR: They're in and out of there all
19 the time, yes. That particular sales rep is selling mesh, and
20 so she comes in and answers any questions that the surgeon
21 might have about that particular mesh that we're putting in a
22 patient. But, yes, multiple different representatives from
23 all types of companies.

24 MR. ROGERS: And have you had any experiences with
25 any of those representatives that would lead you to view

1 medical device companies in an unfavorable way?

2 PROSPECTIVE JUROR: No, I have not.

3 MR. ROGERS: Okay. Thank you.

4 Next is Juror Number 31.

5 How are you?

6 PROSPECTIVE JUROR: Just fine, thank you.

7 MR. ROGERS: Good.

8 And, ma'am, I understand you're retired; is that
9 correct?

10 PROSPECTIVE JUROR: Correct.

11 MR. ROGERS: But if I'm reading your questionnaire
12 correctly, you used to work at the VA Medical Center; is that
13 right?

14 PROSPECTIVE JUROR: Correct.

15 MR. ROGERS: Can you tell me what you did there?

16 PROSPECTIVE JUROR: I was a LPN nurse on -- our floor
17 specialized in medical patients. I mean not specialized. It
18 was a medical floor, but we specialized on oncology.

19 MR. ROGERS: And so what were your duties when you
20 were an LPN?

21 PROSPECTIVE JUROR: My duties were to do patient
22 care, administer medications, IVs that are not narcotic,
23 certain care for patients who are -- have some type of tubing
24 like Duo-Tubes. Patients that are not able to eat, we had to
25 care for that.

1 MR. ROGERS: So sounds like you had a lot of direct
2 patient care.

3 PROSPECTIVE JUROR: Right. Right.

4 MR. ROGERS: And it looks like you are working
5 currently too; is that right?

6 PROSPECTIVE JUROR: Yeah, but not in my special field
7 due to knee problems and back problems. So I'm doing it
8 part-time --

9 MR. ROGERS: Can you tell me what you do now.

10 PROSPECTIVE JUROR: Now I'm just -- I work at the
11 LP- -- LBJ jail. It's Maricopa County, the jail, and I sit
12 and monitor the patients because it's in a psych facility.
13 And monitor to make sure they're safe. Or do no harm to
14 themselves.

15 MR. ROGERS: And so you continue to have a lot of
16 direct patient care, sounds like?

17 PROSPECTIVE JUROR: Not direct. I just sit and watch
18 them and make sure they don't hurt themselves. Mostly the
19 staff there does the direct care. Or the DOs.

20 MR. ROGERS: Okay. Thank you, ma'am.

21 Juror Number 52.

22 PROSPECTIVE JUROR: Yes, sir.

23 MR. ROGERS: How are you, sir?

24 PROSPECTIVE JUROR: Good. Thanks.

25 MR. ROGERS: I understand you are a veterinarian; is

1 that correct?

2 PROSPECTIVE JUROR: Correct.

3 MR. ROGERS: Could you tell me what sort of practice
4 you have as a veterinarian?

5 PROSPECTIVE JUROR: Small animal.

6 MR. ROGERS: And are you in your own practice?

7 PROSPECTIVE JUROR: Yes. And we have multiple
8 locations.

9 MR. ROGERS: So you work with multiple other vets; is
10 that right?

11 PROSPECTIVE JUROR: Yes.

12 MR. ROGERS: Let me follow up on something you got
13 asked by Mr. O'Connor. And you were asked specifically as to
14 whether or not you were going to hold the plaintiffs to a
15 certain burden of proof that may be higher. Do you recall
16 that?

17 PROSPECTIVE JUROR: Yes.

18 MR. ROGERS: And if you were to be put into this case
19 as a juror and you sat and you listened to the evidence for
20 two and a half weeks or so and you were instructed by the
21 Judge as to what the legal burdens are on the parties, do you
22 think you could appropriately apply those burdens?

23 PROSPECTIVE JUROR: I think so. I would make every
24 attempt.

25 MR. ROGERS: And do you think you could be fair and

1 impartial to both sides in that effort?

2 PROSPECTIVE JUROR: I do.

3 MR. ROGERS: All right. Thank you, sir.

4 Your Honor, I don't have any further questions.

5 THE COURT: All right. Thanks, Mr. Rogers.

6 Ladies and gentlemen, from what you have seen, did
7 any of you know any other member of the jury panel before this
8 morning?

9 PROSPECTIVE JUROR: (Juror 29) 88, Juror 88.

10 THE COURT: You are Juror 29?

11 PROSPECTIVE JUROR: I'm 29. We have a common friend
12 and we most commonly ran into each other at intermission at
13 the Herberger.

14 THE COURT: Okay. If you and the other juror were
15 placed on the jury together, could you exercise independent
16 judgment and not be unduly influenced by his views?

17 PROSPECTIVE JUROR: Absolutely.

18 THE COURT: Okay. I'm going to ask the same question
19 of Juror -- is it 88?

20 PROSPECTIVE JUROR: (Juror 88) Yes.

21 THE COURT: Oh, I called you a him. I'm sorry,
22 ma'am. I thought he was pointing to somebody else.

23 Same question for you. If you were on the jury with
24 Juror 29, could you exercise independent views and not be
25 unduly influenced by his views?

1 PROSPECTIVE JUROR: (Juror 88) Yes.

2 I also -- I don't remember your name, but there's a
3 PE teacher I've worked with years and years ago.

4 Yes.

5 THE COURT: You are Juror Number --

6 PROSPECTIVE JUROR: (Juror 23) 23.

7 THE COURT: -- 23.

8 Same question. If you were on the jury with
9 Juror 23, could you exercise your own independent judgment?

10 PROSPECTIVE JUROR: (Juror 88) Yes.

11 THE COURT: Should I ask you, Juror 23, if you
12 remember Juror 88?

13 PROSPECTIVE JUROR: (Juror 23) Looks a little
14 familiar.

15 THE COURT: Could you be independent if you were on
16 the jury with her?

17 PROSPECTIVE JUROR: (Juror 23) Yes, I would be.

18 THE COURT: Okay. Thanks.

19 Anybody else know any other member of the jury panel?

20 Okay. Give me just a minute.

21 All right.

22 Ladies and gentlemen, we, the lawyers and I, are now
23 going to go through the process of choosing the jury, and that
24 takes a bit of time. So we're going to excuse you again and
25 ask that you be back up here in a half hour. So by -- well,

1 I'll tell you what. Instead of that, it's warm outside on
2 this floor, as you know, why don't you be in the jury room, if
3 you would, downstairs by 11:35. That's in a half hour. It's
4 air conditioned.

5 We'll call down there when we're ready. That way you
6 won't be waiting up outside the doors here for ten minutes if
7 we run a little long.

8 I would like to ask that the following jurors remain
9 behind for just a minute: Jurors 16, 44, and 59.

10 Anyone else, Counsel? I think those were the
11 remaining three from what we talked about this morning.

12 MR. O'CONNOR: That's consistent with my notes.

13 MR. ROGERS: May we have a brief sidebar, Your Honor?

14 THE COURT: Sure.

15 Hold on just a minute, ladies and gentlemen.

16 (Bench conference as follows:)

17 MR. WENNER: Morning, Your Honor.

18 THE COURT: Good morning.

19 MR. ROGERS: Apparently my client knew something I
20 didn't know, and that is that Juror Number 4 used to work for
21 a -- she mentioned it, it's called Quintiles, which is a
22 clinical trial company and they have done work for C.R. Bard.

23 THE COURT: Okay. Then let's have Juror 4 remain
24 behind as well.

25 MR. ROGERS: Yes, Your Honor.

1 MR. O'CONNOR: I didn't hear what you said.

2 THE COURT: You can talk as you walk back, but I'll
3 have Juror 4 remain behind.

4 (Bench conference concludes.)

5 THE COURT: Let's also have Juror 4 remain for a
6 minute, if you would. So Jurors 4, 16, 44, and 59, please
7 wait here for just a minute.

8 We will excuse the rest of you. And please be in the
9 jury room at 11:35 and we'll get you up here as soon as we
10 can.

11 You can hand those sheets to Traci as you leave.
12 When you come back, you don't have to sit in the same seats.

13 (Excused jury panelists exit the courtroom.)

14 THE COURT: Okay. Please be seated.

15 Jurors 4 and 16, why don't you remain here for a
16 minute.

17 Jurors 44 and 59, if you would just step outside the
18 double door. You can wait right there; we'll get you in here
19 in about three minutes.

20 All right. Juror 4, there's a follow-up question or
21 two that we need to ask you.

22 Mr. Rogers, you can do it right there if you want,
23 talk right into that mic.

24 MR. ROGERS: I'm sorry I held you back, but
25 apparently there was something I wasn't familiar with. But

1 did you say you worked for a company called Quintiles; is that
2 correct?

3 PROSPECTIVE JUROR: Quintiles, yes. Quintiles merged
4 with INC and now called IQVIA, that's the one I work with.
5 And I started working with them in January 2018. Prior to
6 that I worked with InVentiv Health, which has merged with INC
7 to become Syneos.

8 MR. ROGERS: And at what point were you working for
9 Quintiles?

10 PROSPECTIVE JUROR: I didn't work with Quintiles. I
11 work with IQVIA. But just letting you know that they merged
12 with INC to form IQVIA. So I work with IQVIA. I never worked
13 with Quintiles.

14 MR. ROGERS: Thank you.

15 And have you, to your knowledge, ever worked for any
16 company that's done any sort of work related to C.R. Bard?

17 PROSPECTIVE JUROR: No. No.

18 MR. ROGERS: Okay. Thanks, Juror 4.

19 THE COURT: Thank you, Juror 4.

20 Plaintiffs' counsel, any questions?

21 MR. O'CONNOR: None, Your Honor. Thank you.

22 THE COURT: Juror 4, we'll go ahead and excuse you.
23 Just be in the jury room at 11:35, please.

24 Okay. Counsel, follow-up questions for
25 Juror Number 16.

1 Mr. O'Connor, I didn't know if you had the questions
2 or if defense counsel did.

3 MR. O'CONNOR: Now that you're here privately --

4 THE COURT: You've got to speak into a mic,
5 Mr. O'Connor.

6 MR. O'CONNOR: I forget that all the time.

7 Just needed some information that you didn't provide
8 in your questionnaire.

9 First of all, in response to the question about
10 family members and what they do for a living, you said
11 "privacy." I know there were categories, accounting,
12 engineering, medical. Can you tell us --

13 PROSPECTIVE JUROR: My husband's a physician.

14 MR. O'CONNOR: What type of physician is he?

15 PROSPECTIVE JUROR: Hospitalist.

16 MR. O'CONNOR: Do you know what hospital he works at?

17 PROSPECTIVE JUROR: Estrella Banner. Banner
18 Estrella. Banner Estrella in Phoenix.

19 MR. O'CONNOR: And does he get involved in medical
20 devices?

21 PROSPECTIVE JUROR: No. He just follows up with the
22 patients. I'm sure he deals with the patients with medical
23 devices. I never discuss with him about it.

24 MR. O'CONNOR: I thought -- and what your husband
25 does, is that a reason that you have expressed your feelings

1 against plaintiff attorneys?

2 PROSPECTIVE JUROR: No. I have nothing against
3 plaintiff attorneys, it's just against the companies to be
4 sued that are trying to improve our lives on daily basis.
5 That's the only thing I'm against. Nothing to do with
6 plaintiffs' attorneys. Because in some cases I strongly
7 believe certain companies do need --

8 MR. O'CONNOR: All right. I just --

9 PROSPECTIVE JUROR: -- do need to be held
10 responsible.

11 MR. O'CONNOR: Let me just get to another question
12 here.

13 And the reason we're asking and why it's important to
14 us is because when you answered question 36, you put a 1 for
15 personal injury lawyers, which means you have extreme negative
16 feelings.

17 PROSPECTIVE JUROR: I don't -- I don't have personal
18 injury -- maybe it was mistake, I'm sorry, but I don't have
19 any personal injuries. I never had any personal injuries.

20 MR. O'CONNOR: My question is a little different.
21 There's a question number 36 and it asked you to rank your
22 feelings, being extremely negative as a 1 to extremely
23 positive, and when it came to personal injuries you put a 1,
24 meaning you feel extremely negative towards personal injury
25 attorneys. That's what we want to follow up.

1 PROSPECTIVE JUROR: Okay. It depends, again.
2 Because I read what the case was about. So according to this
3 case, I'm strong against this case.

4 MR. O'CONNOR: Pardon me?

5 PROSPECTIVE JUROR: Because the person is well, I
6 mean recovered the surgery and alive today and in our society
7 and with their families, I strongly believe this case
8 shouldn't be happening. That's why I did only for this case.
9 Not in general.

10 MR. O'CONNOR: I appreciate that. Thank you.

11 THE COURT: Anything from defense?

12 MR. ROGERS: No, Your Honor.

13 THE COURT: Okay. Thanks, Juror 16. If you could be
14 downstairs at 11:35 --

15 PROSPECTIVE JUROR: Can I stay upstairs, though?
16 It's warmer.

17 THE COURT: You sure can.

18 Traci, would you have Juror 44 come in, please.

19 Juror 44, you are good right there if you don't mind
20 standing for a minute. We'll do this quickly.

21 PROSPECTIVE JUROR: I prefer standing. Thank you.

22 THE COURT: There were follow-up questions for
23 Juror 44? Mr. O'Connor?

24 MR. O'CONNOR: Yes.

25 THE COURT: Let's have you talk into a mic so Tricia

1 can hear you.

2 MR. O'CONNOR: Number 44, we just wanted to follow up
3 with you. You were asked questions in your questionnaire.
4 Question 50 was whether you had a relative or someone close to
5 you that was diagnosed with blood clots, deep vein thrombosis,
6 or pulmonary embolism, and your response was "private." So we
7 would like to follow up with you on that.

8 PROSPECTIVE JUROR: It's still private.

9 MR. O'CONNOR: Pardon me?

10 PROSPECTIVE JUROR: It's still private.

11 MR. O'CONNOR: The reason we're asking, obviously we
12 need to know some of the details about that experience. We're
13 not trying to pry, but --

14 THE COURT: Let me ask it this way, Mr. O'Connor.

15 Juror 44, would the experience you've had with that
16 affect your ability to be a fair juror in this case?

17 PROSPECTIVE JUROR: No. Not at all.

18 THE COURT: Then I think we do need to know a bit
19 more about it, if that's all right.

20 PROSPECTIVE JUROR: My mother died from a deep vein
21 thrombosis. Pulmonary embolism traveled from her leg. I have
22 similar conditions. I will die from this condition most
23 likely. I'm not treating it with a box or a pill, I'm just
24 preparing my life.

25 THE COURT: Okay.

1 Go ahead, Mr. O'Connor.

2 MR. O'CONNOR: And Number 44, do you have beliefs or
3 philosophies that prevent from you seeking treatment?

4 PROSPECTIVE JUROR: No.

5 MR. O'CONNOR: Have you ever been advised that you
6 should receive treatment and received recommendations for the
7 type of treatment you should receive?

8 PROSPECTIVE JUROR: I have.

9 MR. O'CONNOR: And have you declined that treatment?

10 PROSPECTIVE JUROR: I have not responded positively
11 to that treatment invitation.

12 MR. O'CONNOR: Pardon me?

13 PROSPECTIVE JUROR: I have not responded in the
14 positive to that offer. I have not taken anybody up on that
15 offer for treatment.

16 MR. O'CONNOR: Were you ever recommended an IVC
17 filter?

18 PROSPECTIVE JUROR: I don't know what that is.

19 MR. O'CONNOR: Okay. So you don't have any
20 background or experience --

21 PROSPECTIVE JUROR: No. I'm really quite sano
22 between the ears. I have no idea about what this trial is
23 about and I have no idea about the treatment available to me.
24 I just answered that question on the questionnaire as I did.

25 MR. O'CONNOR: Okay. Thank you.

1 Is there anything else, David?

2 Thank you, sir, I appreciate that.

3 THE COURT: Mr. Rogers -- hold on, Juror Number 44.

4 Just a minute. Let's give the other side a chance.

5 MR. ROGERS: I just wanted to ask a very brief
6 follow-up question.

7 Is the treatment that you have been offered, if you
8 don't mind sharing it with us, has it been -- I think you said
9 it was drugs; is that right?

10 PROSPECTIVE JUROR: I don't recall mention about
11 drugs.

12 MR. ROGERS: Okay. So --

13 PROSPECTIVE JUROR: Is blood thinner a drug? I don't
14 even know if that's a drug.

15 MR. ROGERS: There are several blood thinners that
16 are drugs, yes.

17 PROSPECTIVE JUROR: That was referenced and that's
18 the only thing I remember.

19 MR. ROGERS: Okay. And you've made an election not
20 to pursue the use of --

21 PROSPECTIVE JUROR: At this point in my life, that's
22 correct.

23 MR. ROGERS: Okay. Thank you, sir.

24 PROSPECTIVE JUROR: Thank you.

25 THE COURT: Thank you, sir.

1 Traci, could you have Juror 59 come in, please.

2 Juror 59, thanks very much for remaining behind for a
3 minute.

4 Plaintiffs' counsel, you had a follow-up question, I
5 think.

6 MR. ROGERS: Your Honor, this is one that I had
7 asked --

8 THE COURT: Oh. Go ahead, Mr. Rogers.

9 MR. ROGERS: Hello, sir. How are you? And thank you
10 for coming back.

11 I just wanted to follow up about some of the things
12 that you had in your questionnaire. And it sounds like you
13 had an experience with a family member that expired; is that
14 correct?

15 PROSPECTIVE JUROR: Three years ago and six days.

16 MR. ROGERS: And it sounds like there was some
17 lawsuit that was brought as a result of that?

18 PROSPECTIVE JUROR: My parents sought. Yeah.

19 MR. ROGERS: Is that suit still ongoing?

20 PROSPECTIVE JUROR: No.

21 MR. ROGERS: Has the suit resolved?

22 PROSPECTIVE JUROR: No. They -- it ran out of steam.
23 My parents were left --

24 MR. ROGERS: Understand. And one of the things I
25 need to specifically follow up on, you had marked in response

1 to a question that indicated that you weren't sure if you
2 could apply the law fairly and impartially in this case based
3 on that experience.

4 PROSPECTIVE JUROR: It is a concern.

5 MR. ROGERS: And is that something that you feel like
6 you were biased against the medical community?

7 PROSPECTIVE JUROR: Not necessarily. But it would --
8 I -- I would be afraid it would shade my consideration.

9 MR. ROGERS: Do you feel like you would favor the
10 plaintiff over the defendant in this case with the defendant
11 being a medical product company?

12 PROSPECTIVE JUROR: Not necessarily.

13 MR. ROGERS: And is there some reason why you feel
14 like you might favor the defendant over the plaintiff?

15 PROSPECTIVE JUROR: No.

16 MR. ROGERS: Okay. I'm just trying to understand
17 what your concern is, if you don't mind helping me out.

18 PROSPECTIVE JUROR: Well, it's still pretty fresh
19 circumstance. And I think -- I think, and the judge mentioned
20 this at the beginning, that perhaps it's possible to set aside
21 a personal experience like that. I'm not certain. I would
22 make every effort to be impartial, but I can't say that that
23 life experience, because it was substantial in my life, it
24 wouldn't shade my -- shade my thinking.

25 But, again, I'm a fairly intelligent person, so I

1 think I would be able to set it aside.

2 MR. ROGERS: Is it fair to say that even if you did
3 your best to try to set aside that personal experience, that
4 you still have some reservation that you may not be able to do
5 that and that it could impact the way you would decide this
6 case?

7 PROSPECTIVE JUROR: I think -- I think understanding
8 more of the -- more of the case, because all I was given was a
9 synopsis, an overview, that I would be able to make a decision
10 based on that. Or I would hope so.

11 MR. ROGERS: But is there any doubt in your mind that
12 you could -- that you may not be able to do that?

13 PROSPECTIVE JUROR: I wouldn't say the word "no"
14 would apply. I --

15 THE COURT: Let me jump in, Juror 59. What I'm
16 hearing you saying, sir, tell me if this is right, is that
17 you've had experience that is still fresh enough in your mind,
18 still enough a part of you, that it is possible it could have
19 an influence. You don't know that because you don't know the
20 case, but it's something that is very present in your life.

21 PROSPECTIVE JUROR: Yeah. I -- the circumstances are
22 different because it wasn't a medical device circumstance, it
23 was improper standard of care. So I think it would be
24 difficult. But, again, using what your instructions were at
25 the very beginning of this process, I think I could still be

1 impartial.

2 THE COURT: Okay. Thanks.

3 Did you have more questions, Mr. Rogers?

4 MR. ROGERS: No, Your Honor.

5 THE COURT: Mr. O'Connor?

6 MR. O'CONNOR: Yes, some follow-up.

7 We're sorry for your loss.

8 You said that the case lost steam. Does that mean
9 the case just stopped, didn't go any further?

10 PROSPECTIVE JUROR: The attorneys, I don't know who
11 they were, hopefully not you, but they lost interest in the
12 case. It started to move along pretty well. We had -- my
13 parents. I say "we." It was my sister, so -- but we had
14 quite a bit of steam at the beginning, had a witness, somebody
15 who was directly involved who was probably putting their
16 medical license at risk in supporting our -- supporting our
17 claim.

18 MR. O'CONNOR: Your parents retained lawyers, I take
19 it?

20 PROSPECTIVE JUROR: Absolutely, yes.

21 MR. O'CONNOR: Is there anything about that and the
22 loss of interest that would affect the feelings you may have
23 against lawyers that represent people on our side?

24 PROSPECTIVE JUROR: Possibly.

25 MR. O'CONNOR: You do have feelings?

1 PROSPECTIVE JUROR: Well, I don't know that it would
2 influence my decision. Again, I don't know -- I don't
3 recollect the name of the attorneys.

4 MR. O'CONNOR: And fair enough. And I appreciate --

5 PROSPECTIVE JUROR: That's more personally animus
6 against those particular individuals more likely. But, again,
7 not knowing who they are, I can't --

8 MR. O'CONNOR: Do you feel, based upon that
9 experience, that you are suspicious and do have some concerns
10 about people who represent people bringing claims?

11 PROSPECTIVE JUROR: Not necessarily, no. No. I get
12 sued all the time.

13 MR. O'CONNOR: Pardon me?

14 PROSPECTIVE JUROR: I get sued all the time.

15 MR. O'CONNOR: Okay. I'm sorry about that.

16 PROSPECTIVE JUROR: That's all right.

17 MR. O'CONNOR: I wanted to follow up with one other
18 point. What do you do for a living?

19 PROSPECTIVE JUROR: I'm in residential property
20 management.

21 MR. O'CONNOR: And that's where the lawsuits --

22 PROSPECTIVE JUROR: Absolutely. Against my company
23 and my PLLC, not against me personally.

24 MR. O'CONNOR: It sounds as though, as you sit here
25 today, it's going to be difficult for you to start out this

1 case neutral; you can't predict if you're going to be able to
2 set aside your feelings. Is that fair?

3 PROSPECTIVE JUROR: I don't think that's accurate. I
4 don't think that's characterized properly.

5 I think that -- like I said, I think I would make
6 every effort to -- to approach it in a -- as an impersonal
7 process as I possibly could.

8 MR. O'CONNOR: Now, there's going to be testimony
9 from doctors in this case. And knowing that, the experience
10 with your parents in that case, is that going to affect you in
11 terms of how you look or view or assess the credibility of
12 medical professionals that come in here and testify?

13 PROSPECTIVE JUROR: Possibly, yeah.

14 MR. O'CONNOR: Okay. Thanks. So you just don't know
15 that you may be looking at a medical professional --

16 PROSPECTIVE JUROR: And harboring suspicion.

17 MR. O'CONNOR: Pardon me?

18 PROSPECTIVE JUROR: And harboring suspicion, to
19 finish your thought. Possibly. I -- I -- I honestly can't --
20 this is the difficulty I had in the way I answered it in my
21 questionnaire. I wouldn't want to be unduly influenced by a
22 personal experience, and that would be my fear.

23 MR. O'CONNOR: Fair enough.

24 THE COURT: All right. Thank you very much,
25 Juror 59.

1 All right. Counsel, I'm going to identify the jurors
2 that I'm going to excuse for hardship.

3 I'm going to excuse --

4 Are you ready, Traci?

5 THE COURTROOM DEPUTY: Yes.

6 THE COURT: -- Juror Number 2, 5, 21, 28, 51, 62,
7 we've already excused Juror 68, 70, and 106.

8 So, Counsel, to save time on challenges for cause,
9 let's initially just have you state challenges to cause
10 through Juror 74, because I don't think we'll need higher than
11 that. If we do, we'll come back to them.

12 So Juror 3 through 74, plaintiffs' counsel, do you
13 have challenges for cause?

14 MR. O'CONNOR: I'll let Mr. Wenner take that,
15 Your Honor.

16 THE COURT: That's fine.

17 If you want to stay seated, Counsel, that's fine.
18 Just be sure you've got the mic right in front of you.

19 MR. WENNER: First one is Juror Number 16,
20 Your Honor.

21 THE COURT: Let's do what we did before. That is,
22 have you identify them, see if the defendants agree or
23 disagree. If they disagree I'll hear reasons.

24 MR. ROGERS: Your Honor, I wish I could come up with
25 a reason to keep Juror 16, but I don't think there is one.

1 THE COURT: All right. I'm going to grant the
2 challenge for cause to Juror 16. I think she was very clear
3 in her answers that she could not be a neutral juror.

4 MR. WENNER: Juror -- I have Juror Number 20.

5 THE COURT: All right. Let's hear -- Juror --

6 MR. WENNER: Juror Number 20 --

7 THE COURT: Let's hear if defense counsel agree or
8 disagree first.

9 MR. ROGERS: Your Honor, I believe she is also
10 somebody we're going to agree with.

11 THE COURT: All right. I'm going to grant the
12 challenge for cause to Juror 20. She said she cannot set
13 aside her favorable views of device manufacturers.

14 Next one, plaintiffs' counsel.

15 MR. WENNER: Number 50, Your Honor.

16 THE COURT: Let's first hear defense counsel's views.

17 MR. ROGERS: Your Honor, I would not agree with
18 Juror 50.

19 THE COURT: Okay. Go ahead, let's hear plaintiffs'
20 reasons.

21 MR. WENNER: Yes, Your Honor. Mr. -- --

22 THE COURT: Let's not mention names.

23 MR. WENNER: Okay. Juror 50 basically said he
24 started out with very favorable feelings against medical
25 device companies. He doesn't like lawsuits against

1 corporations with wealth. And essentially he starts out with
2 bias in favor of the medical device manufacturers. And so, I
3 don't know, in light of the fact we have so many jurors, I
4 just don't see how we can keep a juror like that in light of
5 the predisposition in favor of medical device manufacturers.
6 "Very favorable feelings," I wrote down.

7 He doesn't like lawsuits against corporations with
8 wealth. We're going to be talking about the wealth of this
9 corporation. This is a large, very large, wealthy
10 corporation. Starts out -- we start out, I think, in a
11 one-down position in this case with this particular juror,
12 Number 50.

13 THE COURT: Mr. Rogers.

14 MR. ROGERS: Your Honor, I believe that Juror 50
15 consistently said that all cases are different, he needs to
16 hear the facts of the case. He said he could set aside his
17 biases, and I think he was very clear he would have to hear
18 the facts of this case and the evidence and he could make a
19 decision on that.

20 THE COURT: Okay. Well, you're right, Mr. Rogers, he
21 said that. There are some instances where I have to make a
22 decision on the basis of demeanor. And on the basis of
23 Juror 50's demeanor, I'm going to grant the challenge for
24 cause. I just had doubts after he finished about his
25 fairness.

1 All right, next one for plaintiffs.

2 MR. WENNER: Your Honor, Juror Number 52. Juror
3 Number 52 --

4 THE COURT: Before you make your argument, let's hear
5 defense views.

6 MR. WENNER: Sorry, Your Honor.

7 MR. ROGERS: I disagree, Your Honor.

8 THE COURT: Okay, go ahead.

9 MR. WENNER: Juror Number 52, he -- first of all, in
10 his questionnaire he said he has very unfavorable feelings
11 about personal injury lawyers, he's got concerns about
12 frivolous lawsuits. Those questions 57 through 59, you know,
13 he answered that too many lawsuits, too much -- he doesn't --
14 the damages are too high, believes in caps.

15 But specifically in court he said that he would
16 require a higher burden of proof because of, and I quote,
17 prejudices that he has, and he would hold the plaintiff to a
18 higher burden of proof. And he said, "I don't know if I can
19 be fair and impartial." And so I think that under any
20 circumstances this juror needs to be struck for cause.

21 THE COURT: Mr. Rogers.

22 MR. ROGERS: Your Honor, Juror 52 stated that he
23 could listen to the evidence and apply the law regarding
24 burdens as instructed. I think that his general demeanor was
25 that he could be fair and impartial if he was provided the

1 sufficient evidence in order to do so.

2 THE COURT: Juror 52 gave answers both ways. At one
3 point he said he did not know if he could be fair and
4 impartial. Later, he said that he thought he could be fair
5 and impartial.

6 He did say that he would start with a higher burden
7 of proof on plaintiff. Plaintiff does have the burden of
8 proof, but I didn't think that's what he was talking about.

9 So I'm going to grant the challenge for cause to
10 Juror 52.

11 MR. WENNER: The next one is Juror Number 59.

12 THE COURT: Let's hear defense's view.

13 MR. ROGERS: I would agree, Your Honor.

14 THE COURT: I'm going to grant the challenge for
15 cause to Juror 59. It was evident that the loss of his family
16 member is a very fresh memory for him and he was concerned it
17 might have some influence. So I will grant that challenge.

18 Any others from plaintiff?

19 MR. WENNER: Let me --

20 THE COURT: We're stopping at 74.

21 MR. WENNER: Right.

22 You struck 62 for cause, right, Your Honor, or
23 hardship?

24 THE COURT: 62 we excused --

25 MR. WENNER: Struck for hardship.

1 THE COURT: -- for hardship.

2 MR. WENNER: Do you have others?

3 (Counsel confer.)

4 MR. WENNER: Hold on one second, Your Honor, I have
5 to get to that particular juror.

6 The -- so Juror Number 44, Your Honor. We heard --

7 THE COURT: Are you challenging him for cause?

8 MR. WENNER: Yes.

9 THE COURT: All right.

10 Defense view?

11 MR. ROGERS: Disagree, Your Honor.

12 THE COURT: Go ahead, Counsel.

13 MR. WENNER: He said that -- I believe he said that
14 he would possibly have concerns about our side because of his
15 concerns about plaintiffs' lawyers, that he would be -- the
16 thing that was difficult about his testimony is he couldn't --
17 he said he possibly would be biased, but he couldn't tell us
18 in what way he could be biased in this case.

19 But it's clear that he's deeply affected by the loss
20 in this case. Mr. O'Connor asked him about the plaintiffs'
21 lawyers seeming to be dropping the case, if he gets into this
22 case and he decides somehow that that bias, you know, is
23 important to his judgments --

24 THE COURT: I think -- I think you're talking about
25 Juror 59.

1 MR. WENNER: Oh. Am I?

2 (Counsel confer.)

3 MR. WENNER: Oh, yeah, yeah, yeah. You're right,
4 you're right, you're right.

5 I guess Juror Number -- I apologize, Your Honor.
6 Juror Number 44. So we know he's being untreated for his
7 blood clots. His mother died of a blood clot.

8 Now, he wasn't sure about IVC filters. If he gets in
9 here and says, wow, that might be a good idea, how can I find
10 against this company when they have such a great product that
11 could save my life, could have saved my mother's life, how can
12 we trust that juror sitting on this case? He has so much
13 personally at stake in this case and how it could come out,
14 how it could turn, that, you know, I think it would be unfair
15 for him to sit as a juror in this case.

16 THE COURT: Mr. Rogers.

17 MR. ROGERS: Your Honor, I didn't hear anything from
18 Juror 44 that indicated a bias. He's clearly got some
19 personal issue as to why he remains untreated, but he said he
20 did not know anything about IVC filters, never heard of them.
21 He said multiple times nothing about his decisions would
22 impact his ability to be fair, no beliefs that prevent him
23 from being fair. So I didn't hear anything, really, from a
24 bias standpoint from that juror.

25 THE COURT: I did not either. I don't think he said

1 anything about bias. But I'm concerned about Juror 44 as a
2 person who says he will die from a DVT or PE; his mother died;
3 he's turned down medical advice; and he couldn't really or
4 wouldn't articulate why. I'm just concerned about a juror who
5 was not as forthcoming as I would expect with these issues and
6 yet has direct personal life experiences that will be touched
7 upon by this trial. So I'm going to grant the challenge for
8 cause to Juror 44.

9 Are there others from plaintiffs' side?

10 MR. WENNER: No, Your Honor.

11 THE COURT: All right.

12 Mr. Rogers, from the defense side?

13 MR. ROGERS: Your Honor, I think our one and only
14 strike for cause is Juror Number 25. She works at Banner
15 Wound Care as a scheduler. I'm sure you will recall her. In
16 Mr. O'Connor's questioning she said she did not want to be
17 involved in the trial and generally just seemed opposed to the
18 idea of being here at all. So, Your Honor, for that reason we
19 would move to strike her for cause.

20 MR. WENNER: I would agree, Your Honor.

21 THE COURT: All right. I will grant the challenge
22 for cause to Juror 25.

23 Okay. Let's then count up the 15 lowest-numbered
24 jurors that remain and make sure we all end up on the same
25 number.

1 I get through Juror 71. Traci does as well. Does
2 that sound right to you, Counsel?

3 Let me just give you the 15 by my count.

4 They are Jurors 3 --

5 MR. O'CONNOR: I'm sorry, could you start over,
6 Your Honor.

7 THE COURT: 3, 4, 6, 15, 18, 22, 23, 29, 30, 31, 32,
8 46, 58, 67, and 71.

9 Does that look right?

10 MR. ROGERS: Yes, Your Honor.

11 THE COURT: Plaintiffs' counsel, does that look
12 right?

13 MR. O'CONNOR: Yeah, that looks good to us.

14 THE COURT: Okay.

15 You've got three peremptory strikes per side. Let's
16 try to do those reasonably quickly. We've had the jurors
17 waiting for five minutes downstairs. Let us know as soon as
18 you've identified the three.

19 You look puzzled, Mr. O'Connor.

20 MR. O'CONNOR: I hope I didn't --

21 THE COURT: Pull the mic over.

22 MR. O'CONNOR: I think I wrote notes on the Judge's
23 list. Is this what we're supposed to use for our strikes or
24 are we going to get a clean copy?

25 THE COURT: No, that's what you use. We're not going

1 to give it to anybody. I assume you can read your own notes.

2 MR. WENNER: We'll make do.

3 MR. O'CONNOR: We'll do all right.

4 THE COURT: Okay. All we need are the three numbers.
5 You don't need to hand us back a clean list.

6 MR. O'CONNOR: All right.

7 THE COURT: Please move along as expeditiously as
8 reasonable.

9 (Pause in proceedings from 11:41 to 12:03. Proceedings
10 resumed in open court with the jury panel present.)

11 THE COURT: Please be seated.

12 Counsel, would you come to sidebar, please.

13 (Bench conference as follows:)

14 THE COURT: Traci said you had an issue you wanted to
15 raise.

16 MR. WENNER: Yes, Your Honor. I wanted to raise a
17 *Batson* challenge. The defense struck three jurors, two of
18 which were black. I think this woman may have been from
19 Africa. I don't know where she's from, so I don't want to
20 call her African-American, but she's clearly black. She is
21 Juror Number 4.

22 And they struck Juror Number 31. Juror Number 31 was
23 saying she was an LPN. Under *Batson* --

24 THE COURT: I remember who they are. Go ahead.

25 MR. WENNER: Okay. Under *Batson*, as you probably

1 well know better than me, they have to have a facially neutral
2 reason other than race being the basis for striking them and
3 it just seems a little curious two out of the three jurors
4 they strike are, you know, black.

5 (Pause in bench conference.)

6 THE COURT: We'll be with you in just a minute,
7 ladies and gentlemen.

8 (Bench conference resumed.)

9 THE COURT: All right. So I think that the challenge
10 is a prima facie case of discrimination, which is the first
11 step in the Ninth Circuit under a *Batson* challenge and the
12 burden then shifts to the defense to come forward with a
13 nondiscriminatory, meaning race neutral, explanation for the
14 strikes.

15 MR. ROGERS: I agree, Your Honor.

16 Sure. Starting with Juror Number 4, she, as you
17 heard, is a clinical research associate. She works for a
18 company that does clinical trials for a drug company. She
19 told or said in the voir dire questioning that she has
20 contacts with doctors who are involved in conducting those
21 trials.

22 As the Court is aware, the plaintiffs are going to be
23 playing the deposition of Dr. Kandarpa in this case, who is a
24 medical monitor for a clinical trial sponsored by Bard. He is
25 going to have unfavorable things to say about Bard. And that

1 is our race-neutral reason for striking Juror Number 4.

2 THE COURT: And 31.

3 MR. ROGERS: 31 is an LPN. She said in voir dire
4 that she worked for the Veterans Hospital when she was
5 working, and she took care of oncology patients. She said she
6 had a lot of direct patient care as part of that job. She
7 said that she currently is working for what sounded to me like
8 a hospital connected with the jail, and that she is in a
9 position where she monitors psychiatric patients currently.

10 And I think that she has a lot of empathy,
11 potentially, for people who are in hospitals and under medical
12 care, and I think that she may identify with the plaintiff in
13 this case, and that is the reason that we struck her.

14 THE COURT: All right. I think those are
15 race-neutral explanations. So the burden shifts back to
16 plaintiff to make a showing that these reasons are pretext for
17 discrimination.

18 MR. WENNER: Your Honor, Juror Number -- is it 31?
19 Juror Number 31 hardly ever spoke. She's an LPN. The fact
20 she could be empathetic towards the plaintiff, she never said
21 that empathy was going to somehow bias her. I understand they
22 can do that, but they can choose to strike whoever they want
23 if it's -- if -- unless it's racially motivated, and it just
24 seems odd that out of the two of three jurors they used their
25 peremptories on, two of them are black.

1 And the last one, the last juror, I don't see how --
2 what -- I don't think that anything he said was a
3 justification from --

4 THE COURT: Let me interrupt you. You're talking
5 about a juror other than the two black jurors now?

6 MR. O'CONNOR: No, I'm talking about the two black
7 jurors. I don't think anything counsel just said is a
8 justification for defendants to think that somehow that they
9 would -- that she would be an adverse juror. If anything, she
10 may be a good juror for them. The fact she's in the medical
11 field, both in the medical field. They may like the medical
12 witnesses and be more inclined to side -- to side with the
13 defendant.

14 So -- I don't think it's a close question to
15 Juror Number 31. Perhaps Juror Number 4 I could see, you
16 know, that argument. Not on Juror 31. Not even close, in my
17 mind. So -- she didn't say anything on her questionnaire,
18 nothing, that put her in a bias category. And the only thing
19 I can see is that she happens to be African-American.

20 THE COURT: All right. I'm going to deny the *Batson*
21 challenge. The reason I'm going to do it is because the
22 defense has provided, in my view, reasonable race-neutral
23 grounds for having used their peremptory strikes against
24 Jurors 4 and 31.

25 I understand plaintiffs' counsel doesn't agree with

1 the reasons, but that is not the test. The test is whether
2 they're reasonable race-neutral grounds. I think they are.
3 Therefore, I don't think purposeful discrimination or even
4 nonpurposeful race discrimination has been shown, and so I
5 will deny the *Batson* challenge.

6 MR. ROGERS: Your Honor, may I state one more thing
7 just for purposes of the record?

8 THE COURT: Yes.

9 MR. ROGERS: In response to what plaintiffs' counsel
10 just stated, Juror 31 in her questionnaire did rank
11 plaintiff's attorneys a 5, devices manufacturers a 4, and
12 corporations a 3. She also has a son who has been sued for
13 downloading music and so she may have bias against businesses.
14 So I just wanted to say that in response to what plaintiffs'
15 counsel said.

16 THE COURT: Okay. That's on the record.

17 (Bench conference concludes.)

18 THE COURT: All right. Thank you very much for your
19 patience, ladies and gentlemen. We're well aware we took a
20 half hour longer than we told you we would. But we've
21 completed the process now of choosing the jury.

22 Traci is going to call forward the nine of you who
23 have been chosen to serve.

24 THE COURTROOM DEPUTY: Juror Number 3.

25 Juror Number 15.

1 Juror Number 18.

2 Juror Number 22.

3 Juror Number 23. Ma'am, you're going to be right
4 here.

5 Juror 29.

6 Juror 46.

7 Juror 58.

8 Juror 71.

9 THE COURT: All right. For those of you who have
10 been chosen to serve on the jury, before we excuse the rest of
11 the jury panel, have any of you thought of anything that you
12 did not mention in your questionnaire or in response to
13 questions this morning that could affect your fairness to
14 serve as a juror in this case?

15 All right, I see no hands.

16 For the rest of you -- yes, Juror 4, we'll get those
17 things to you.

18 For the rest of you, thank you very much for being
19 here. We appreciate your presence. We were able to choose
20 the jury because you were here.

21 We will excuse you. Please just check in at the jury
22 office before you leave. We'll excuse you now with our
23 thanks.

24 (Excused panelists exit the courtroom.)

25 THE COURT: Please be seated.

1 All right. Would those of you who have been chosen
2 to serve on the jury please stand to be sworn as jurors.

3 THE COURTROOM DEPUTY: Raise your right hands,
4 please.

5 (The jury is sworn.)

6 THE COURT: Thank you. Please be seated.

7 Ladies and gentlemen, we know you've been waiting for
8 an hour, but during that hour we've been working and we now
9 need to take a lunch break for the benefit of everybody before
10 we actually start the trial. So we're going to excuse you in
11 just a moment. But let's figure out for how long.

12 Counsel, how much time do we need to address the
13 issue we didn't get to this morning, about openings?

14 MR. LOPEZ: Ten minutes, Your Honor.

15 THE COURT: Okay. So let's do this, ladies and
16 gentlemen. We will plan to start at 1:30. That will give us
17 time to deal with an issue and then give everybody a lunch
18 break before we start.

19 When you come back, I'll give you some preliminary
20 instructions. We'll then hear opening statements from each
21 side about what they think the evidence will show, and then
22 we'll start with our first witness.

23 While you are on lunch break, please remember not to
24 talk to anybody about the case. Don't let anybody talk to you
25 about it.

1 In fact, in your book you will see there's a badge
2 that says "Juror" on it. We would ask you to wear that when
3 you're in the courthouse. So if you don't go around for lunch
4 and you're just hanging out in the courthouse, put that on and
5 that way people in the courthouse know not to discuss a case
6 anywhere within your earshot.

7 You can take off the numbered stickers you've had.

8 When you leave the courthouse, you don't have to keep
9 the juror badge on unless you want to.

10 We don't have a cafeteria in the courthouse. We have
11 a little kiosk down by the elevators that sells some salads
12 and sandwiches.

13 If you go out the door to Washington and go east,
14 there's a restaurant immediately across 4th Avenue on the
15 south side and one on the north side. There are other
16 restaurants further down into town.

17 When you come back, we'll have you gather in the jury
18 room, and Traci or Nancy will take you out this door and show
19 you where that room is and where to gather. And if you could
20 be there at 1:30, we'll get started with the trial.

21 Counsel, anything else before we excuse the jurors?

22 MR. O'CONNOR: Nothing from our side, Your Honor.

23 MR. ROGERS: No, Your Honor.

24 THE COURT: Okay. We'll see you at 1:30.

25 (The jury exited the courtroom at 12:18.)

1 THE COURT: All right. Please be seated.

2 Mr. Lopez, you have some objections to slides, I
3 think.

4 MR. LOPEZ: Can I approach here, Your Honor?

5 THE COURT: You may.

6 MR. LOPEZ: The good news is they've gone from
7 whatever the number was to about maybe certainly less than
8 half of what they originally were.

9 Counsel, make sure, you're going to take out
10 Number 9. And I agree with your addition to the others about
11 adding "reported rates."

12 Let me just get to the ones that concern us the most.

13 I mean, you've heard us talk about this all the time,
14 Your Honor, about the filters being lifesaving devices. We're
15 still waiting -- we've had two trials where there's been no
16 scientific evidence of that.

17 I don't mind the data on here, but the caption --

18 THE COURT: What slide are you talking about?

19 MR. LOPEZ: Slide 22.

20 THE COURT: I don't have a copy.

21 MR. LOPEZ: Are these numbered the same?

22 MR. ROGERS: At some point, Ramon, I think they may
23 start to be one slide off. If we get to that point, I'll let
24 you know.

25 THE COURT: So it's in the vicinity of 22?

1 MR. LOPEZ: I think that one might actually be 22.

2 THE COURT: And it's the one that has "Lifesaving
3 Devices" in the title?

4 MR. LOPEZ: Right. I don't mind the evidence, but to
5 me that's argument, whether or not these things are lifesaving
6 devices.

7 THE COURT: So what you're objecting to is the
8 reference at the beginning of "Lifesaving Devices"?

9 MR. LOPEZ: Yes, sir. Yes, Your Honor.

10 THE COURT: All right.

11 MR. ROGERS: Your Honor, we do plan to present to the
12 jury that evidence will show that filters are lifesaving
13 devices and I think, Your Honor, that we will support that
14 evidence at trial. And this is what we believe the evidence
15 will show.

16 THE COURT: All right. I'm going to overrule the
17 objection in light of the representation that there will be
18 evidence on that point.

19 MR. LOPEZ: Slide 52. This one, Your Honor.

20 THE COURT: 99.99 --

21 MR. LOPEZ: Bard filters are 99.99 percent effective.

22 THE COURT: Okay.

23 MR. LOPEZ: There's been no evidence to that thus
24 far. I mean, that's argument. I mean, there's no facts that
25 I'm aware of that have come in in either of the prior two

1 trials that show that Bard filters are 99.99 percent
2 effective.

3 THE COURT: All right.

4 Mr. Rogers.

5 MR. ROGERS: Your Honor, we believe there is evidence
6 of that and it is based on Bard's internal rates for tracking
7 that issue.

8 And Mr. Lopez -- I told him I would add to certain
9 slides it was a reported rate and he accepted that, and if it
10 would make him comfortable I can add that same language to
11 this slide.

12 THE COURT: Do the math for me. What is the internal
13 data that allows you to tell the jury the evidence will show
14 99.99 percent effectiveness?

15 MR. ROGERS: That is the reported rate of PE deaths
16 with the Bard filters.

17 THE COURT: All filters?

18 MR. ROGERS: Well, that specific data point is in
19 relation to the G2X and the Eclipse filters, which are the
20 filters we have at issue in this trial.

21 THE COURT: So you're saying the data will show that
22 deaths in recipients of G2X and Eclipse filters is less than
23 one --

24 MR. ROGERS: .01 percent.

25 THE COURT: -- one one-hundredth of 1 percent?

1 MR. ROGERS: Yes, Your Honor, if that's the way the
2 math works out. I'm not real good at that.

3 THE COURT: That's what it is, one one-hundredth of
4 1 percent.

5 Do you disagree that the internal data from Bard will
6 show that?

7 MR. LOPEZ: That the internal -- the internal data
8 shows that there have been that many reports, but this is
9 telling the jury that the other 99.99 got hit with a clot and
10 the device worked.

11 We didn't know anything about those other 99.-- --
12 this is about effectiveness. He already has in here the
13 reported rates of fractures, migrations in the 90 percentile.
14 This is telling the jury that 99.99 --

15 THE COURT: I understand your point.

16 What is your response to that, Mr. Rogers?

17 MR. ROGERS: Your Honor, we believe the evidence will
18 show that. I mean based on the Bard internal rates.

19 THE COURT: Well, but for this to be right, wouldn't
20 100 percent of the filters have to have trapped a clot for
21 them to be --

22 MR. ROGERS: I would say, Your Honor, close to
23 100 percent of the patients experienced no known pulmonary
24 embolism.

25 THE COURT: Well, but that doesn't say that the clot

1 worked to stop the pulmonary embolism in each of them; right?

2 MR. ROGERS: That is correct, Your Honor. I have no
3 data that I could present to the jury that would show that a
4 clot was stopped by every filter that was placed.

5 THE COURT: And isn't that what 99.99 percent
6 effective means? It's effective in stopping clots
7 99.99 percent of the time?

8 MR. ROGERS: Your Honor, I would disagree, but I see
9 that's where you're going and if you want me to pull this
10 slide, I'll be glad to do it.

11 THE COURT: I'll sustain the objection to that slide.

12 MR. LOPEZ: The next one is 53. And this is
13 Dr. Kinney. Dr. Kinney, the risk/benefits claims. They're
14 identifying Dr. Kinney as a plaintiffs' expert. And, of
15 course, the rule has been that if you're going to use the
16 testimony of the other side's expert, you can't -- as
17 testimony, you can't identify that expert as the plaintiffs'
18 ex- -- plaintiffs' expert.

19 Dr. Kinney may or may not testify in this case.
20 Depends on time and his availability. He has not testified
21 thus far so there is no testimony from him about that.

22 THE COURT: Mr. Rogers.

23 MR. ROGERS: Well, Your Honor, based on some of
24 Mr. Lopez's prior representations, I thought that Dr. Kinney
25 was going to appear as a witness at the trial. If that's the

1 case, he's testified to this in his deposition so I assume
2 he'll testify to this at trial.

3 If Mr. Lopez can tell us for sure he's not going to
4 be here, I'll be glad to pull the slide.

5 MR. LOPEZ: No, I can't say that for sure. But he
6 can cross-examine him on this if he does. But if he
7 doesn't -- if he's not here --

8 THE COURT: Are you going to call him as a witness?

9 MR. LOPEZ: If we can. I mean, he's -- depends
10 whether or not he qualifies as a rebuttal witness. That's the
11 only time he's available.

12 THE COURT: So you will only use him as a rebuttal
13 witness if you use him at all?

14 MR. LOPEZ: Right. He's not available otherwise.

15 THE COURT: And if he isn't called as a witness, then
16 this won't come in; right?

17 MR. ROGERS: I'm glad to pull the slide if we know
18 he's not going to be here in the case in chief.

19 THE COURT: Let's pull it, then, for that reason.

20 MR. LOPEZ: The one I have the most concern about,
21 Your Honor, is -- the one I have --

22 Mark, you have -- oh, here. I'm almost there.

23 Slide 82. Should say "No Warnings Claim, Design
24 Defect Only."

25 I mean, this -- there is a warnings claim, but the

1 warnings claim is the defendants', that their warnings somehow
2 make the device not unreasonably dangerous.

3 This is going to mislead the jury that warnings --
4 that when we start talking about warnings and the sufficiency
5 of what is in the IFU or the sufficiency of what information
6 they provided as part of their duty to make the device safer,
7 it's going to confuse the jury about whether or not that's
8 something they're supposed to consider in this case.

9 So what they do here, they say there's no warnings
10 claim and then it's followed by all the slides with the IFU
11 where the jury is going to get a false impression that
12 whatever is stated on these slides are adequate because we're
13 not claiming -- there's no warnings claim. That's a legal
14 argument.

15 THE COURT: I understand the objection.

16 Mr. Rogers.

17 MR. ROGERS: Your Honor, I was planning on using this
18 slide to let the jury know that there is no warnings case
19 against Bard in this case. But they are going to be hearing
20 about the instructions for use that accompany the product, and
21 I think it's important for them to know that they're going to
22 only be hearing about those instructions that come with the
23 product in the context of how they relate to the design claim.
24 And, Your Honor, I think that's where we are in this case and
25 I think the jury's going to need to understand that.

1 THE COURT: I'm going to -- I'm going to sustain the
2 objection for this reason, Mr. Rogers. If we say highlighted
3 in yellow "there is no warnings claim," that's suggesting to
4 the jury that the plaintiffs are not challenging the
5 sufficiency of the warnings. And they clearly are when it
6 comes to the warnings' relevancy to whether or not the product
7 is safe. And they clearly asserted a warnings claim that I
8 ruled against them on as a matter of law.

9 I think it's okay for you to say this is a design
10 defect case and for you to explain to them how, in your view,
11 the risks that are disclosed ensure the safety of the product,
12 which is what the case is about. But I don't think we should
13 say there's no warnings claim because I think they'll infer
14 that means the plaintiffs aren't complaining in any way about
15 the warnings, and they clearly are in the case. So I think we
16 should take that yellow highlighted statement out.

17 MR. ROGERS: Very good, Your Honor. I just want to
18 make sure it's okay to use this slide if the yellow portion is
19 removed?

20 THE COURT: I think it's okay to say this is a design
21 defect case because that clearly -- that's what it is.

22 MR. ROGERS: Thank you, Your Honor.

23 THE COURT: Are there others, Mr. Lopez?

24 MR. LOPEZ: No, Your Honor. I said I was going to be
25 ten minutes or less.

1 THE COURT: You made it in ten minutes. Good job.

2 Okay. We will plan to resume at 1:30. I will do the
3 instructions and we'll go into openings.

4 If you want to pull the lectern over so we'll be
5 ready, that will be fine. We'll see you then.

6 (Recess taken from 12:29.)

7 (End of a.m. session transcript.)

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C E R T I F I C A T E

I, PATRICIA LYONS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control, and to the best of my ability.

DATED at Phoenix, Arizona, this 18th day of September, 2018.

s/ Patricia Lyons, RMR, CRR
Official Court Reporter